

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LISA MENNINGER,

Plaintiff,

v.

PPD DEVELOPMENT, L.P.,

Defendant.

Civil Action No.
1:19-cv-11441-LTS

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 1

Monday, March 20, 2023
9:02 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

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Official Court Reporter
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TABLE OF CONTENTS**TRIAL WITNESSES**

On behalf of the Government:	<u>Page</u>
LISA A. MENNINGER	
By Mr. Hannon	163

EXHIBITS

	<u>Admitted</u>
Number 3	171

MISCELLANEOUS

	<u>Page</u>
Preliminary Instructions by the Court	122
Opening Statement by the Plaintiff	139
Opening Statement by the Defendant	149

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Today is Monday, March 20, 2023, and we're on the record in civil case number 19-11441, Lisa Menninger vs. PPD Development, LP.

And would counsel please identify themselves for the record.

MR. HANNON: Good morning, Your Honor, Patrick Hannon, along with Hampton Watson, on behalf of Dr. Menninger, who is here with us as well.

THE COURT: Good morning.

Good morning, Dr. Menninger.

MS. MANDEL: Good morning, Your Honor. Rachel Mandel and Patrick Curran on behalf of Defendant PPD, and with us is Deborah Ballweg of PPD.

THE COURT: Good morning.

Good morning, Ms. Ballweg.

All right. Anything to discuss?

MR. HANNON: Nothing -- well, before I say "Nothing," so just to note for the Court, at Thursday's pretrial, we had noted there might be some objections to some

1 of the deposition transcript testimony for Mr. Mekerri early
2 this week. We decided not to press those objections with
3 respect to Mr. Mekerri, which is why we didn't submit
4 anything for the Court to look at that.

5 THE COURT: Perfect.

6 MR. HANNON: And then, Your Honor, I'd also raised
7 an issue regarding jury instructions, whether or not we had
8 any separate instructions for federal versus state. We filed
9 something this morning on that.

10 THE COURT: I just saw you filed it, and I haven't
11 had a chance to really think about it, but I'll just tell you
12 what -- since I think you noted some differences on certain
13 issues between state law and federal law, and I didn't have a
14 chance to really dig into that yet.

15 But you can look at that, Ms. Mandel, and think
16 about it.

17 And in a big-picture way, what I was thinking about
18 would be assuming that I agree in the end that there is this
19 difference, like, between state law, and I think it was on --
20 partially on causation, and partially on adverse action, that
21 there are a couple ways you can think about -- or we can
22 think about addressing that in the jury instructions, short
23 of having a whole thing about the federal -- and a whole --
24 like one way to do it is -- I guess there's three ways. One
25 is just instruct them on whatever is the lower standard, and

1 have that bind both. You might not want -- the defendants
2 might want to do that, might not want to do that, and that's
3 fine. That's just a choice.

4 The second way to do it is we could just ask like
5 two causation questions. Another way for me to do it is I
6 could instruct on, like, the whole federal claim, have
7 questions on that, and say here's the state law claim, but
8 it's the same. There's four elements, they're all the same,
9 except and these -- and then just there's not too much more
10 in the instructions, and then we could have separate, you
11 know, on the verdict form, separate questions, so something
12 like that.

13 All right. Anything else?

14 MR. HANNON: That's all, Your Honor.

15 THE COURT: And so today, we'll pick the jury,
16 we'll go, I think, until 4:00. Possibly -- I think probably
17 just 4:00. It's tough for jurors to go more than two hours,
18 in my experience, and pay attention, and so if we're going to
19 take a break after two hours, then why are we going to go to
20 4:30.

21 And so your first witness will be?

22 MR. HANNON: Dr. Menninger.

23 THE COURT: Dr. Menninger. All right. And what --
24 did you have anything else you wanted to go over, Ms. Mandel?

25 MS. MANDEL: No, Your Honor. I let Ms. Belmont

1 know that there may be an issue that we need to resolve prior
2 to tomorrow about one of the contested exhibits, but some of
3 that will depend on what we hear from Mr. Hannon about who he
4 plans to call tomorrow.

5 THE COURT: All right. And did you all resolve how
6 you want to handle the sort of scheduling of either witnesses
7 who both of you want to call, if you will, quote, call, or
8 the witnesses who might not be available until next week?

9 MR. HANNON: So in terms of figuring out witness
10 availability, I think we're -- I was able to move one witness
11 around to this week. So my expectation is we're probably
12 going to be good this week and not run out of witnesses.

13 THE COURT: Meaning you'll be able to do all the
14 people you want to call. And then on Monday, you'll call the
15 people who are basically from -- that they accepted service
16 for, who will be available next week.

17 MR. HANNON: There's one other witness who is not
18 available this week, a third party. She had a family issue.
19 So we have her penciled in for Monday morning at 9:00 a.m.
20 this week. But, again, my expectation depends on how quickly
21 we go, but I'm hopeful that we're not going to run out of
22 witnesses this week.

23 THE COURT: Okay.

24 MS. MANDEL: And Your Honor, just on that note,
25 given this information about a witness that may be pushed

1 over to Monday, it is possible that we might want to raise
2 going a full day on Monday, if it turns out that it's going
3 to look like a very full day, because we also have witnesses
4 coming in from out of town, who we had scheduled tentatively
5 for Monday, so it's something that we can look at as the week
6 progresses, but I just wanted to raise the --

7 THE COURT: Going next Monday all day meaning to
8 accommodate those people, so they don't have to stay over.

9 MS. MANDEL: Yes. And we can -- as we figure out
10 how this week plays out, I think we can address that further,
11 but I wanted to --

12 THE COURT: So what I was planning to tell the --
13 that's helpful, first of all, because I like to give the
14 jurors advanced notice if they're going to stay in the
15 afternoon.

16 Is it still -- what I was going to tell them, and
17 tell me now if I shouldn't say this, was that the lawyers
18 have promised me that the case will get to the jury no later
19 than next Friday. Getting to the jury means no later, in my
20 mind, than 3 or 4 o'clock Friday of next week, and then
21 retiring to deliberate, figuring that, you know, two hours of
22 that Friday would be taken up, at least, by two hours of
23 closing argument and charge.

24 Is that realistic? Should I say that? Are you
25 comfortable with me saying that to them?

1 MS. MANDEL: I still think that is realistic. I
2 just think we've had a little bit of shuffling around of how
3 that looks, and that certainly might require doing a full day
4 at least next Monday, but I still think that would work best,
5 given the witnesses who are coming from out of town.

6 MR. HANNON: And, yes, I'm very confident we'll be
7 done a week from Friday.

8 THE COURT: Okay. All right. So I will tell them
9 we'll go 9:00 to 4:00 today, 9:00 to 1:00 every day, except
10 next Monday, because there's -- there might be out-of-state
11 witnesses, and it's possible we'll need to go all day just to
12 accommodate all them. That will be 9:00 to 1:00, and 2:00 to
13 4:00. And that all the other days will be 9:00 to 1:00,
14 they'll get it by next Friday, and then next Friday, or the
15 day -- or whenever they get it, I'll expect them to stay all
16 day for the deliberations and thereafter. Okay.

17 Kellyann, do you know when?

18 THE DEPUTY CLERK: They said between 9:30 and 9:45.

19 THE COURT: Okay. And do either of -- how long are
20 you going to be on openings?

21 MR. HANNON: I'd say 15 to 20 minutes, Your Honor.

22 THE COURT: Okay.

23 MS. MANDEL: Same here, Your Honor.

24 THE COURT: Okay. All right.

25 MR. HANNON: And maybe just one other thing,

1 Your Honor. We had had discussion on Thursday at the
2 pretrial regarding some additional company names.

3 THE COURT: Oh, right.

4 MR. HANNON: And I apologize, I don't -- I should
5 have drafted something up to give to you. I can do that on
6 the a piece of paper now and --

7 THE COURT: You can just say the names, if you
8 want.

9 MR. HANNON: That works, too.

10 Bristol Myers Squibb, GlaxoSmithKline.

11 THE COURT: Wait. Slow down.

12 Bristol Myers Squibb.

13 MR. HANNON: GlaxoSmithKline, Gedeon Richter.

14 THE COURT: That's a company, not a person?

15 MR. HANNON: Correct.

16 THE COURT: Yes.

17 MR. HANNON: Clario, C-l-a-r-i-o, and Quest
18 Diagnostics.

19 THE COURT: And these are companies -- it's not
20 whether they heard of them. It's that they either worked for
21 them or have done business with them? That's really what
22 we'd be looking for for those companies?

23 MR. HANNON: I think that's good enough, yeah,
24 Your Honor.

25 THE COURT: All right. Okay. And then if they

1 came up, it would really be a question of do they have
2 anything to do with PPD's lab business?

3 MR. HANNON: I think that's right. We're just
4 going to be asking them what their involvement is, and I
5 think, from that involvement, we'll be able to tell whether
6 or not --

7 THE COURT: That would be -- right. So a Bristol
8 Myers Squibb's salesperson, who goes to the hospitals in the
9 West Coast, would come up, and we'd be done with him or her.

10 MR. HANNON: I think that's right.

11 THE COURT: Okay. All right.

12 Make sense to you, Ms. Mandel?

13 MS. MANDEL: Yes, Your Honor. I think some of
14 these, from our standpoint, seem a little far afield, but if
15 we're going to ask the follow-up questions and make the
16 determination, that seems harmless.

17 THE COURT: All right. Fine.

18 And what time did you say? 9:30 or 9:45?

19 THE DEPUTY CLERK: Yeah.

20 THE COURT: Okay. Then why don't you -- well,
21 we'll stand in recess and just be around. And Ms. Belmont
22 will let you know when -- rather than us reconvening and
23 sitting here in silence with each other for 20 minutes,
24 she'll just let you know when they're coming -- when there's
25 a five minutes, so that you'll have notice that they're

1 coming up, and we'll reconvene. So that we're here before
2 they come in.

3 All right. Stand in recess. Thank you.

4 (Court in recess at 9:12 a.m.

5 and reconvened at 9:41 a.m.)

6 THE COURT: Whenever you're ready, Jim.

7 MR. MCALEAR: Thank you, Your Honor.

8 (The venire enters the courtroom.)

9 THE COURT: Good morning, ladies and gentlemen. My
10 name is Leo Sorokin. I'm one of the judges here at the
11 federal court. And in a few moments, we're going to be
12 picking from among you a group of people to serve as jurors
13 in the case that we have slated for trial here today. And
14 along the way, I'll tell you about how we're going to pick
15 the jurors, and I'll tell you about the case and the schedule
16 and all of those things that you're wondering about. But
17 before we get to that, I want to talk to you briefly about
18 jury service. And I know that it's something that some
19 people dread and -- but it is one of the most fundamental
20 parts of our system of justice in the United States. And I
21 know that each of you probably has a job or school to attend
22 or family responsibilities to deal with, or any number of
23 other ways that you were planning to spend today before you
24 were called to the federal courthouse for jury service. And
25 I'm probably not overstating it to say that I doubt very many

1 of you this morning, when you were having breakfast, were
2 thinking, wow, can't wait to go to the federal court for jury
3 service. Just what I really wanted to do this Monday
4 morning. And so I understand that. You have your own lives
5 and your own things that you want to do in your life, and
6 your own things that you need to do, and your obligations,
7 and the like. But you, nonetheless, came today. And just by
8 coming here today, you have already begun to do something,
9 not for yourself, but for your country. And I know that
10 sounds like an overstatement, but it's not. It's the truth.
11 And so on behalf of the Court, I thank you for coming.

12 Each of you is a citizen of the United States, and
13 as a citizen, we have both rights and responsibilities. One
14 of the rights we have is the right to a jury trial. Our
15 constitution guarantees that every person in the United
16 States has the right to a trial by an impartial jury of his
17 or her peers, to resolve disputes that arise with other
18 people or companies. And that right means that, in every
19 civil case, and the case that we have here today is a civil
20 case, the question of whether the person bringing the lawsuit
21 has proven his or her claims against the defendant is
22 determined by a fair and impartial cross-section of citizens
23 drawn from the community, people like yourselves, each of
24 whom brings his or her own individual perspective and life
25 experience to your jury service.

1 But with that right to a jury trial, a right which
2 we all have, comes a related responsibility. We have all the
3 responsibility to serve on a jury. And by serving on juries,
4 we give life to the guarantee in the constitution, to the
5 right -- to the constitutional right to an impartial jury of
6 citizens drawn from all walks of life. And without citizens
7 like yourselves, willing to honor their responsibility to
8 serve on a jury, courts like this court would be unable to
9 ensure that the Constitution's promise of a jury trial is
10 fulfilled for every citizen. That is why jury service
11 applies to every citizen, and that is why it is so important,
12 and that's why you're here today.

13 So first, I'd like to ask each of you to promise to
14 do something, not really for me, but for your country, and
15 for every person in it, including the parties to this case.
16 And what I'm asking you to promise is simply to try to be
17 willing to serve as a fair and impartial juror in this case,
18 if that's something that you're able to do.

19 Is that something that you can each promise?

20 (Affirmative responses.)

21 THE COURT: Okay. Thank you.

22 So let me tell you first who is here, who works for
23 the Court, and then we'll go through the jury selection
24 process.

25 Ms. Belmont is what's called my courtroom deputy

1 and she's responsible for -- if you're on the jury, she'll be
2 managing the jury, and bringing them in and out of the
3 courtroom. She keeps track of all the exhibits, she swears
4 in all the witnesses, and she does a variety of other things
5 not in the courtroom to keep this case and other cases
6 running on track.

7 To my left, your right, is Ms. Lopez here. You see
8 her typing away. Ms. Lopez is a court reporter. She takes
9 down everything that's said in the courtroom. You might
10 think that if you're on the jury, oh, good, we'll get a
11 transcript. We don't have to remember anything. Uh-uh. It
12 doesn't have to work that way. We won't have -- it takes a
13 lot of time and effort for Ms. Lopez to transform the notes
14 that she's taking into a final transcript, so if you're on
15 the jury, you won't have that, because it won't be done. And
16 so if you're on the jury, you'll need to pay attention to
17 what happens in the court room, and that's why there's a
18 number of people on the jury, because it's your collective
19 memory that helps to remember everything that happened.

20 Further to my left, you see three young women, and
21 they are my law clerk and interns, who help me do what I do.
22 My law clerk and the interns are people in law school who
23 also help me do what I do, and they're also learning. So
24 they're here for those purposes.

25 So in a minute, Ms. Belmont -- or now, maybe,

1 Ms. Belmont, why don't you administer the oath to the jurors.

2 THE DEPUTY CLERK: Jurors, if you can please stand
3 and raise your right hand.

4 (The venire was duly sworn.)

5 THE COURT: Please be seated.

6 So ladies and gentlemen, that oath is just an oath
7 to promise to tell the truth. What's going to happen now --
8 let me give you an overview of what we're going to do between
9 now and when we're done with jury selection.

10 First, I'm going to ask you a series of questions.
11 And when I ask you a question, if the answer is yes, hold up
12 your juror number that you each have, and wait until I say
13 your number. When I say your number, it means I have noted
14 that you said yes to that question. And so that's part one.
15 I'll just ask a series of those questions. All right? And
16 the purpose of those questions is, some of them, I'll need to
17 ask you follow-up questions that are about the schedule and
18 about the case, whether you could be fair in this particular
19 case. And there's no problem saying yes, and in any event,
20 that's part one.

21 Then when we're done with asking that, Ms. Belmont
22 will take you all into an adjacent courtroom, and you'll just
23 be able to sit there, read, talk to each other, whatever you
24 want to do. And I'll call into the courtroom, in here,
25 anybody who said yes to a question, to ask some follow-up

1 questions. And the purpose of that, for example, the
2 schedule, maybe the schedule is a problem for you for some
3 reason about the case, and I'll find out about that, and
4 we'll talk about that.

5 So that's part 2. And at the end of that process,
6 maybe some of you will get excused, because this isn't a jury
7 that you can serve on because of schedule or some other
8 reason. And otherwise, when we're done with that process,
9 I'll bring all of you back into the courtroom. And then from
10 those people in the courtroom, who haven't been excused,
11 we'll pick the jury. And we'll put people in the jury box,
12 and I might ask you to say just what you do for work, and
13 then the next stage is the lawyers have an opportunity, if
14 they wish, to strike individual people on their own.

15 And so we'll go through that process. It doesn't
16 take too long. And when we're done with that, we have a
17 jury. And then everybody else, I'll send you -- I don't
18 think we have another trial today, so we'll send you
19 downstairs to go on your way. And then we'll begin the
20 trial, and those of you who are on the jury, I'll then have
21 more explanations for you.

22 And just so you understand, that's the process.
23 And let me tell you why I put you all in another courtroom.
24 We used to do this at sidebar, and you'd all sit here, and
25 the problem with you all sitting here is you have to be

1 quiet. And, like, if I were you, I wouldn't really like
2 that. And so if you go in another courtroom, you can read,
3 you can talk to each other. It's a little freer. And then
4 the person who comes in here, it's a little easier -- it's
5 the last of our COVID precautions, it's like we're all
6 farther away from each other, and it works better.

7 So that's the process. All right?

8 So first, let me tell you about this case. This is
9 a civil case. The plaintiff in a civil case is the person
10 bringing the lawsuit. In this case, the plaintiff is
11 Dr. Lisa Menninger. The defendant is the party being sued.
12 Here, the defendant is a company called PPD Development, LP,
13 which I will refer to as PPD for short. Dr. Menninger is a
14 former employee of PPD. PPD hired Dr. Menninger in August
15 2015 to work as the executive director of its global central
16 labs based in Kentucky. In January of 2018, Dr. Menninger
17 disclosed to PPD that she suffered from social anxiety
18 disorder and panic disorder, and she requested that PPD
19 provide her with accommodations for those conditions.

20 She alleges that, thereafter, PPD failed to provide
21 her with reasonable accommodations for her medical condition,
22 discriminated against her on the basis of her condition, and
23 retaliated against her for requesting accommodation.

24 Dr. Menninger further alleges that PPD's actions
25 severely exacerbated her preexisting medical conditions,

1 caused her to develop major depression, and ultimately render
2 her unable to work. She seeks to recover for the lost wages
3 and emotional distress that she alleges that she suffered as
4 a result of PPD's alleged actions.

5 PPD denies Dr. Menninger's allegations.

6 At the conclusion of the case, the jury will
7 resolve this dispute.

8 So, first, do any of you know me or any of the
9 court staff that I have pointed out? No.

10 All right. So as I've said, the plaintiff, or the
11 person bringing the lawsuit is Dr. Menninger, and she is
12 represented by two lawyers, one of whom is Mr. Hannon.

13 Mr. Hannon, if you'd introduce your client and your
14 co-counsel.

15 MR. HANNON: Sure thing. Good morning. My name is
16 Patrick Hannon, I'm with a law firm called Hartley Michon
17 Robb Hannon. That's my colleague, Hampton Watson, and this
18 is our client, Lisa Menninger.

19 THE COURT: All right. Thank you. Do any of you
20 know, or are you related to Dr. Menninger? No.

21 And do any of you know the two attorneys
22 representing Dr. Menninger or are any of you related to them?
23 No.

24 All right. And have you ever been employed by or
25 done business with either of the lawyers or their law firm?

1 No.

2 All right. The defendant, I said, is PPD
3 Development. That's a company. And they are represented by
4 Attorney Mandel and her colleagues. And Attorney Mandel, if
5 you'd introduce them and your client representative.

6 MS. MANDEL: Good morning, I'm Rachel Mandel with
7 the law firm Ogletree Deakins Nash Smoak & Stewart. Here
8 with my partner Patrick Curran and our paralegal Miranda
9 Almand, and we are here, as well, with Deborah Ballweg from
10 PPD.

11 THE COURT: All right. Do any of you know PPD,
12 Bellweg, or have you done business with PPD? No.

13 Do any of you know Ms. Mandel or her colleagues or
14 have you related to them or have you done business with their
15 law firm? No. All right.

16 Next, I want to read to you, first, a list of
17 people who may testify in this case, and then I will ask you
18 if you are related to or know any of these possible
19 witnesses:

20 Deborah Ballweg of Hollandale, Wisconsin;
21 Christopher Fikry, F-i-k-r-y, of Wilmington, North Carolina;
22 Christopher Clendening, C-l-e-n-d-e-n-i-n-g, of Cleeves,
23 Ohio; Brent McKinnon of Pittsburg, Texas; Chad St. John of
24 Liberty Township, Ohio; Hacene Mekerri, M-e-k-e-r-r-i, of
25 Singapore; Tonya Hart of Bend, Oregon; Mason Menninger of

1 Bend, Oregon; Dr. Marianna Kessimian, K-e-s-s-i-m-i-a-n, of
2 Providence, Rhode Island; Dr. Martin Kelly, of Westport
3 Point, Massachusetts; William Scally of Newburyport,
4 Massachusetts; Dr. Alicia Burbano, B-u-r-b-a-n-o, of
5 Albuquerque, New Mexico; Dr. Paul Summergrad of Newton,
6 Massachusetts; and Bruce Jonas of Nesconset, New York.

7 Do any of you know any of these witnesses or are
8 you related to them?

9 All right. Number 4. Thank you juror number 4.
10 Thank you.

11 Next I'm going to read you a list of companies, and
12 at the end, I'm going to ask you whether you -- these are
13 companies that you may hear testimony about, and so if you
14 work for any of these companies or if you do business with
15 these companies, not if you've heard of them. Okay? Not if
16 you once purchased their product, but if you've actually done
17 business with them in a different way, or if you're employed
18 by them, then raise your hand.

19 Bristol Myers Squibb, GlaxoSmithKline, Gedeon
20 Richter, Clario, or Quest Diagnostics.

21 All right. So I have juror number 9, juror number
22 10, juror number 11, juror number 19 -- I have 9, 10, and 11.
23 Juror number 21, juror number 27, juror number 38, and juror
24 number 44. Okay.

25 All right. Have any of you heard or read anything

1 about this case, or do you know anything about the case,
2 other than what I've told you?

3 Juror number 29.

4 Do you have any interest in the outcome of this
5 case? No.

6 If you look around, just at each other, do you
7 see -- do you think you know what any -- anyone else in the
8 jury pool? No. All right.

9 Have you, a close family member, or a close friend
10 ever been -- worked in the field of psychology, psychiatry,
11 or social work?

12 All right. That's juror number 18, juror number 6,
13 juror number 36, juror number 21, juror number 4, juror
14 number 24, juror number 26, juror number 32.

15 Okay. Have you, a family member, or a close friend
16 ever been fired from a job for reasons that you believe were
17 unfair or discriminatory, been accused of discriminating or
18 retaliating against someone in the workplace, been involved
19 in an investigation at work, either as a -- as management, a
20 witness, or employee, or requested an accommodation for a
21 disability at your workplace?

22 Juror number 18, juror number 21, juror number 6,
23 juror number 9, juror number 44. Okay.

24 Have any of you ever worked in a supervisory
25 position, where you received or considered an employee's

1 request for accommodation of their disability?

2 Juror number 3, juror number 6, juror number 21,
3 juror number 38, juror number 40, juror number 25, juror
4 number 30.

5 Have any of you formed an opinion about this case,
6 either based on things that you knew or heard before coming
7 here today, or based on what I've told you so far? No.

8 THE DEPUTY CLERK: 6.

9 THE COURT: Oh, 6. All right. Sorry.

10 Anyone else? No.

11 All right. Have any of you expressed an opinion
12 about this case, or has anyone expressed an opinion to you
13 about this case? No.

14 Are you aware of any bias, prejudice, or other
15 reason that would make it difficult for you to serve as an
16 impartial judge of the facts of this case?

17 All right. Juror number -- juror number 6, juror
18 number 21, juror number 22, juror number 26, juror number 27,
19 and juror number 31.

20 Is there anything about the facts or the parties in
21 this case that might make it difficult for you to be fair and
22 impartial? Only raise your hand as to this question -- if
23 you raised your hand to the last question, you don't need to
24 raise your hand to this question, but if you didn't to the
25 last question and if it's yes, then tell me.

1 All right. So juror number 19, juror number 25,
2 and juror number 15.

3 Is there anything about the fact that the plaintiff
4 is seeking money damage for her suffering and losses that
5 might make it difficult for you to fairly and impartially
6 decide this case?

7 Juror number 20. Okay.

8 Jurors must decide cases based solely on the
9 evidence presented in the courtroom. Jurors may not consult
10 the Internet. Jurors may not investigate any matter relating
11 to this case in any way.

12 Will any of you have any difficulty following that
13 principle of law? No.

14 It is for jurors to decide what the facts are in
15 the case and to return a verdict applying the law as the
16 Court explains it. Jurors in this case will have to follow
17 the law as I describe it, whether or not the jurors
18 personally agree with the law.

19 Will any of you have difficulty following that
20 legal principle? No.

21 Have you, a family member, or a close friend ever
22 made a claim for or been a witness in a lawsuit similar to
23 this one or any civil lawsuit? No.

24 THE DEPUTY CLERK: 18.

25 THE COURT: Juror number 18. Okay.

1 Have any of you served in any court as a juror in a
2 criminal or civil case, or as a member of a grand jury, and
3 such service might make it difficult for you to serve as a
4 fair and impartial juror in this case? No.

5 Do any of you have any difficulty hearing?

6 All right. Juror number 14 and juror number 23 and
7 juror number 26. I'm sorry, there was one more besides juror
8 number 26, in response to the hearing question, I have juror
9 number 23 and juror number 14. Was there anyone else? No.
10 Okay.

11 Do any of you have any difficulty understanding the
12 English language?

13 Juror number 16.

14 Anyone else? No.

15 Do any of you have any physical disability or are
16 any of you taking any medication that might affect your
17 ability to concentrate or sit comfortably during the course
18 of the trial?

19 Juror number 6, juror number 23, juror number 26.
20 Okay. All right.

21 Let me tell you about the schedule in this case.
22 So the schedule will be as follows: Today, we'll go from
23 now, and the jury will go until 4 o'clock today, with a lunch
24 break, and so forth. Each day thereafter, the trial will
25 be -- will start promptly at 9:00 a.m., and will end each day

1 at 1:00 p.m. So 9:00 to 1:00, so you'll have your afternoons
2 for work or life or whatever else. We'll follow that
3 schedule for the whole trial.

4 The jury will receive this case for deliberations,
5 the lawyers have promised me, no later than Friday of next
6 week. So this week and next week. So two weeks. And the
7 jury will receive the case no later than Friday of next week.

8 You should expect, if you're on the jury during the
9 trial, we'll start every day promptly at 9:00 a.m. this week
10 we'll finish every day by 1:00 p.m. When I say 1:00 p.m., I
11 mean 1:00. I won't keep you until 1:15 or 1:30. It will be
12 1 o'clock each day.

13 Next week, it's possible on Monday that we would go
14 from 9:00 to 1:00 and 2:00 to 4:00, because on that Monday,
15 there will be some witnesses who are coming from out of
16 state, and we might go a little longer, so that they don't
17 have to stay overnight in Boston. But the other days next
18 week will be 9:00 to 1:00 each day. And once you receive the
19 case for deliberations, then I would ask you to stay all day
20 until you complete -- until you reach a verdict.

21 So with that, that's the schedule that the Court --
22 that each day, and that's the duration of this trial.

23 So I'm about to ask you about whether this would be
24 a serious hardship, and to give you an idea about what I mean
25 by serious hardship, the fact that you have a job that you'll

1 miss to serve on the jury is not normally a hardship.
2 Everyone has a responsibility to serve on a jury when called,
3 no matter whom they are. A scheduling conflict rarely
4 constitutes a hardship. Meetings or appointments that can be
5 changed, postponed, or sometimes missed are not hardship.
6 Scheduling hardship is only if it's something that is out of
7 the ordinary that conflicts with the trial schedule that
8 can't be postponed.

9 I'll give you two, three examples that are
10 automatic, pretty much. Your wedding is this coming weekend,
11 no problem, you're out.

12 You have a prepaid vacation with nonrefundable
13 tickets, no problem.

14 You have nonelective surgery, you're out. Okay.

15 Those are the kinds of things.

16 So with those reminders and caveats in mind, does
17 the schedule for this case pose a serious hardship for any of
18 you?

19 All right. Juror number 1, juror number 4, juror
20 number 17, juror number 18, juror number 20, juror number 6,
21 juror number 37, juror number 25, juror number 28, juror
22 number 31, juror number 32, juror number 46. All right.

23 Last question. Is there anything that I have not
24 asked you about that might make it difficult for you to
25 decide this case fairly and impartially, based on the

1 evidence presented in court and the context of the Court's
2 instructions to you on the law?

3 Juror number 26.

4 Anyone else? No.

5 Okay. So we're done with the first part.

6 Second part I told you about, all of you are going
7 to go in another courtroom right next door. Talk about
8 anything that you want except this case. And I'll be calling
9 you in one by one to talk to me.

10 So you understand, no one will serve on the jury
11 who raised their hand in response to a question, unless
12 they've spoken with me individually. It will always happen
13 before you're put in the jury box as a possible juror. So
14 don't worry about that in terms of how we do the process.

15 So I'd ask all of you, except juror number 1,
16 because I have to talk to you, so you might as well to stay
17 here, to go in the other room with Ms. Dore. All right.

18 (The venire exits the courtroom.)

19 (Juror number 1 present.)

20 THE COURT: And juror number 1, if you'd come up to
21 the witness box, right there. Yes. Just have a seat.

22 You can remove that, as long as you speak loudly.

23 You said you had a scheduling issue. Tell me what
24 that is.

25 THE JUROR: I'm sorry?

1 THE COURT: You said you have a scheduling issue?

2 THE JUROR: I have a scheduling and my mother's on
3 hospice.

4 THE COURT: I'm sorry, I couldn't hear you.

5 THE JUROR: My mother's on hospice.

6 THE COURT: Oh, I'm sorry.

7 THE JUROR: And I do have a travel. I don't have a
8 car. I borrowed a car today.

9 THE COURT: I see. Where do you live?

10 THE JUROR: Newburyport, Mass.

11 THE COURT: Oh, I see. All right.

12 THE JUROR: I mean, I can come in, but I'd have to
13 take the bus if I got selected.

14 THE COURT: And would that get you here?

15 THE JUROR: That would take me into South Station.

16 THE COURT: Right. And could you do that to get
17 here by 9:00 a.m.?

18 THE JUROR: Depending on -- I would have to see
19 what time it left in the morning. I'm not sure what the
20 schedule is.

21 THE COURT: Is your mother at hospice at home with
22 you?

23 THE JUROR: No, she's in a nursing home, in the
24 hospice care right now.

25 THE COURT: In or near Newburyport?

1 THE JUROR: I'm sorry?

2 THE COURT: In or near Newburyport?

3 THE JUROR: It's in Newburyport.

4 THE COURT: Well, let me just ask you, in terms of
5 the schedule, I guess the question that I'd really ask just
6 you, and I'll follow what you tell me, do you feel like given
7 that your mom's in hospice, you could be here -- I understand
8 if something happens in the course of the two weeks, that's
9 different. I'm not asking you for a promise about that. But
10 do you think you could -- it's an important case to
11 Dr. Menninger, it's an important case to PPD. And so do you
12 think while -- if you were on the jury, you could be here and
13 be here each day and concentrate, and given the situation
14 you're in right now, or do you feel like, honestly, this
15 isn't the time for you?

16 THE JUROR: It would be very hard.

17 THE COURT: Okay. Fine. I think I will excuse you
18 from service on this jury. All right.

19 THE JUROR: Thank you.

20 THE COURT: I wish you good luck with your mother.

21 Ma'am, you just have to get your card from
22 Ms. Belmont.

23 Number 3.

24 (Juror number 1 not present.)

25 (Juror number 3 present.)

1 THE COURT: If you'd come right in to the witness
2 box. Yeah, you can put your things down or bring them with
3 you, whatever you prefer.

4 Good morning.

5 THE JUROR: Good morning.

6 THE COURT: So you answered yes to one question, I
7 think, about having worked in a position as a supervisor
8 where you received a request for accommodation?

9 THE JUROR: Yes.

10 THE COURT: Can you tell me about that?

11 THE JUROR: I worked as a manager at a bank, and
12 one of my employees had some kind of condition -- I let HR
13 deal with it, but whatever this person requested, I would
14 just vet it through HR.

15 THE COURT: All right. And anything about that
16 experience -- how did that experience work out for you?

17 THE JUROR: For me, personally. Fine. I tried to
18 be as accommodating to the person. He wasn't terminated, but
19 he left on his own --

20 THE COURT: Accord.

21 THE JUROR: His own means and terms and such.

22 THE COURT: I see. Right away or some time later?

23 THE JUROR: He worked for me for maybe, like, six
24 months or so, and you know, he made his conditions aware to
25 us maybe within a month of hiring. And again, towards the

1 six month, he left --

2 THE COURT: He decided he wanted to leave.

3 THE JUROR: Yeah.

4 THE COURT: And did any lawsuit or claim or
5 settlement arise from that?

6 THE JUROR: Not that I'm aware of. HR wouldn't
7 have told me if that would have been the case, anyways. At
8 least I don't think they would have.

9 THE COURT: I see. Do you feel like you could be
10 fair and impartial in this case?

11 THE JUROR: Yes.

12 THE COURT: Okay. Do either of you have any
13 follow-up questions?

14 THE JUROR: Just briefly.

15 MR. HANNON: Just briefly. Was there any claim or
16 allegation by the employee that you had acted improperly at
17 all?

18 THE JUROR: I don't believe so, no.

19 MR. HANNON: That's all I got.

20 THE COURT: All right. Anything?

21 MS. MANDEL: No, thank you.

22 THE COURT: All right. Thank you very much.

23 (Juror number 3 not present.)

24 THE COURT: Just a reminder, I assume you don't
25 have a challenge to this person, but if you want to make a

1 challenge for cause, do it before the next person gets in the
2 box.

3 MR. HANNON: I'll make a challenge for cause,
4 Your Honor, just for the record. I think he has life
5 experience that's directly on par with this, and despite his
6 attestation that he thinks he would be able to set aside his
7 own biases, he doesn't necessarily know the facts of this
8 case, and I think that once he does, it's going to mirror his
9 own personal life experience too greatly.

10 THE COURT: That's overruled. I think his
11 experience was -- I mean, that he had an experience with
12 someone who made an accommodation, he -- he heard about it,
13 he passed it on to HR. As far as he was aware, there was no
14 allegation that he did anything wrong. There was no claim.
15 The person didn't make any allegation against him. He was
16 not aware of any claim or allegation against the company, so
17 he has some knowledge and experience with it, but not very
18 much. And he seemed to me to think that he could be fair
19 and -- he said he could be fair and impartial. And I don't
20 see any reason why He can't be. So your objection is noted
21 for the record.

22 Sam, next.

23 (Juror number 4 present.)

24 THE COURT: Good morning.

25 THE JUROR: Good morning.

1 THE COURT: I think you said yes to a couple of
2 questions. I'll start with the schedule question.

3 THE JUROR: Yes.

4 THE COURT: Tell me about the schedule issue for
5 you?

6 THE JUROR: Next Thursday my husband and I were
7 leaving for California, because he's having an ablation done,
8 a cardiac ablation the following week, so two weeks after --
9 because he wanted to see --

10 THE COURT: So you're going on vacation next
11 Thursday?

12 THE JUROR: Yeah.

13 THE COURT: Okay. I'll excuse you from -- and you
14 want to do it because he's then coming back to have some sort
15 of medical procedure and you want to do it before --

16 THE JUROR: Cardiac ablation, yeah.

17 THE COURT: Okay. Fine. I will excuse you from
18 this case.

19 THE JUROR: Okay. Thank you.

20 (Juror number 4 not present.)

21 THE COURT: Sam, juror number 6.

22 (Juror number 6 present.)

23 THE COURT: Right up here in the witness box.

24 Good morning.

25 THE JUROR: Good morning.

1 THE COURT: So you answered yes to a number of
2 questions. I'll start with the last one, the schedule.

3 THE JUROR: Oh, yeah. I'm not sure this will
4 count, but I have my own business, a private practice.

5 THE COURT: Therapy practice?

6 THE JUROR: Yes, that's right. So it would be a
7 significant financial hardship for me to serve for two weeks.

8 THE COURT: You see patients when and how often?
9 Every day 9:00 to 5:00.

10 THE JUROR: Pretty much. 9:00 to 5:00, 10:00 to
11 6:00, yeah.

12 THE COURT: I see. Okay. So you'd have to -- like
13 to do this, some people would miss appointments and some
14 people you would have to reschedule like until later hours,
15 essentially, if you could?

16 THE JUROR: That's correct, yes.

17 THE COURT: Okay.

18 THE JUROR: But for many of them likely would not
19 be seen for some of those days.

20 THE COURT: And most of your patients, are you
21 seeing them three times a week, once a week, once a month.

22 THE JUROR: Most of my patients, in my private
23 practice, are weekly.

24 THE COURT: Do you work other than in your private
25 practice?

1 THE JUROR: I do. I work in a clinic, an HIV
2 clinic, part time.

3 THE COURT: And do you do that -- what's the
4 schedule for that?

5 THE JUROR: That is 8:45 to 5:00, every day, or for
6 three days a week, Monday, Tuesday, Wednesday.

7 THE COURT: So Monday, Tuesday, Wednesday, you are
8 in the clinic and Thursday, Friday, you see patients in
9 private practice.

10 THE JUROR: Yeah. Wednesday, Thursday, Friday, I'm
11 in my private practice. That's correct.

12 THE COURT: Okay. We'll circle back to that in a
13 minute.

14 You also said that physical disability or a
15 medication that might make it hard to sit?

16 THE JUROR: That's right. I have ADHD. I have a
17 very hard time sitting still and paying attention.

18 THE COURT: All right. And what do you do during
19 the therapy hour to sit still?

20 THE JUROR: Shockingly, I'm able to focus much
21 easier when I'm with my clients.

22 THE COURT: So here, the schedule is 9:00 to 1:00.
23 We usually take a break at 11:00 for about 15 or 20 minutes,
24 and then we come back. So it's sort of two hours and then
25 call it an hour and three quarters. And sitting in the jury

1 box right across from you. And then during that time, you're
2 free to, whenever you want, stand up and stretch, during
3 questions, answers. That's totally fine. And then there are
4 a couple of days, today we'll probably go -- we'll go until
5 4:00, and there might be one other day where we come back in
6 the afternoon, and we'll do 2:00 to 4:00. Knowing yourself
7 and knowing that your ability to focus and sit still, that
8 kind of schedule, how would that be?

9 THE JUROR: I think it would be challenging, but
10 maybe I could manage it.

11 THE COURT: Okay. You said yes to a number of
12 other questions, essentially, some related to -- well, you're
13 a therapist, you obviously answered that question. And you
14 had experience with considering a request for an employee for
15 an accommodation?

16 THE JUROR: Uh-huh. That's right.

17 THE COURT: Tell me about that.

18 THE JUROR: I as a supervisor at an eating disorder
19 residential program, and so I would review any of the
20 employees that I worked with, that were my supervisees, if
21 they had requests for disability accommodations.

22 THE COURT: And did any of them have such requests?

23 THE JUROR: Yes.

24 THE COURT: And what happened with those requests?

25 THE JUROR: Most of the time I would review them

1 with the clinical director and I would often advocate for
2 them to be approved.

3 THE COURT: And did any of those result -- did
4 anyone ever say you did anything wrong in those, any of the
5 employees?

6 THE JUROR: No.

7 THE COURT: Did any of them ever result in either
8 litigation or complaints?

9 THE JUROR: No.

10 THE COURT: Anything about that experience that you
11 think might affect your ability to be fair and impartial in
12 this case?

13 THE JUROR: I do. Because I feel very strongly
14 about people receiving their disability benefits and
15 receiving accommodations.

16 THE COURT: Would you be able to -- well, that's
17 what the law is, right, the fact that anybody who's disabled
18 is entitled to a reasonable accommodation.

19 THE JUROR: That's right.

20 THE COURT: But the question often is is the
21 person -- there is a number of elements to that, is the
22 person disabled, is the accommodation reasonable, or does the
23 accommodation impose an undue burden, and what are the
24 essential features of the job. And would you be able to
25 listen to the evidence on all of those issues and make a fair

1 and impartial determination, or would your sort of view that
2 people should be entitled to sort of the accommodation that
3 their disability merits, sort of fast track you toward, oh,
4 well, somebody claims a disability, so they must be right?

5 THE JUROR: I would have a very hard time
6 considering the other side, I think, in the situation, in any
7 situation such as this.

8 THE COURT: Okay. All right. I think I'm going to
9 excuse you, both for that and given the hit that your income
10 would take and the nature of your practice.

11 THE JUROR: Thank you. I very much appreciate
12 that.

13 THE COURT: I'll excuse you from service on this
14 jury. Have a nice day.

15 (Juror number 6 not present)

16 THE COURT: I have the next juror who answered yes
17 to a question is juror number 9. Is that what you all have?

18 MR. WATSON: Excuse me?

19 THE COURT: I have juror number 7 and 8 did not
20 raise their hand.

21 MR. WATSON: That agrees with my notes, Your Honor.

22 MS. MANDEL: Mine, as well.

23 THE COURT: All right. So juror number 9, right,
24 Sam?

25 MS. DORE: Yes.

1 (Juror number 9 present.)

2 THE COURT: Good morning.

3 THE JUROR: Good morning.

4 THE COURT: You answered yes to the question of
5 knowing somebody who had been fired or who had been accused
6 of discrimination or involved in an investigation or had
7 requested an accommodation. Tell me about that.

8 THE JUROR: I was fired, not for discrimination.

9 THE COURT: What were you fired for?

10 THE JUROR: It's a little complicated.

11 THE COURT: What did they say and what did you say?
12 If there's a disagreement as to the reason.

13 THE JUROR: They said that I acted inappropriately
14 in the workplace. I did not.

15 THE COURT: Okay. What kind of accusation of
16 inappropriateness?

17 THE JUROR: I was a sales director, and there was a
18 cultural and language misunderstanding, and they believed
19 that I said something that I didn't say. It was in Eastern
20 France, 25 years ago.

21 THE COURT: It was in eastern France?

22 THE JUROR: 25 years ago.

23 THE COURT: That's where you were working. Oh, I
24 see. All right.

25 So 25 years ago, you were a sales director. You

1 had a conversation with someone who was a subordinate?

2 THE JUROR: Yes.

3 THE COURT: And the -- the subordinate said you
4 said something and told some higher up, or somebody else in
5 the company that you said something. You didn't say that
6 particular thing, but it arose out of, in your view, a sort
7 of language and cultural misunderstanding, and the company,
8 in any event, fired you for it, something like that?

9 THE JUROR: Similar, but different, yes.

10 THE COURT: How different?

11 THE JUROR: I didn't actually address the person
12 that was in front of me. There were three people in the
13 room. I said something to myself and it was misunderstood
14 what I said.

15 THE COURT: I see.

16 THE JUROR: And what I had meant. And I was fired
17 for cause.

18 THE COURT: Okay. And anything about that
19 experience that you think would make it -- that was a long
20 time ago -- anything about that experience that would make it
21 difficult for you to be fair and impartial in this case?

22 THE JUROR: At the time, I was fired for cause and
23 lost the equivalent of about \$50,000 and had to go find a
24 job, living in a foreign place. So, maybe, yeah, it was
25 probably another question that you had asked that I needed to

1 answer, as well.

2 THE COURT: No problem. So I'm just asking you now
3 whether you think that, like, thinking about that experience,
4 do you feel like you could listen to the evidence in this
5 case from Dr. Menninger and listen to it and fairly and
6 impartially evaluate whether she has proven her claims or
7 not?

8 THE JUROR: Yes. I mean, I can listen and fairly
9 and evaluate. That was a very personal and deep --

10 THE COURT: Sure.

11 THE JUROR: -- experience. But that was 25 years
12 ago, and I've seen a lot in life.

13 THE COURT: And do you think that you could be --
14 listen to the evidence and -- as to PPD, listen to the
15 evidence, all of the evidence, and be fair and impartial in
16 rendering judgment as to them, too.

17 THE JUROR: I would have to.

18 THE COURT: I know you would have to, but I guess
19 my question is whether you could.

20 THE JUROR: Yes.

21 THE COURT: Okay. So you don't feel like that
22 experience that you had would be sort of a thumb-on either
23 side?

24 THE JUROR: That was my experience.

25 THE COURT: Right. Okay.

1 You also answered yes to the question about, I
2 think, knowing some of the companies.

3 THE JUROR: Yes. We deal with GSK,
4 GlaxoSmithKline.

5 THE COURT: In the work you have now?

6 THE JUROR: Correct. Customer work.

7 THE COURT: And how do you -- what do you do with
8 them?

9 THE JUROR: We provide packaging equipment.

10 THE COURT: For, like, their products?

11 THE JUROR: Yes.

12 THE COURT: Do you ever deal with their laboratory
13 business?

14 THE JUROR: No.

15 THE COURT: Okay. Do either of you have any
16 follow-up questions?

17 MR. HANNON: Nothing here, Your Honor.

18 THE COURT: Anything for you, Ms. Mandel?

19 MS. MANDEL: Nothing here. Thank you.

20 THE COURT: All right. Thank you very much.

21 (Juror number 9 not present.)

22 THE COURT: Yes? He's gone.

23 MS. MANDEL: Your Honor, we object for cause. The
24 answer that juror number 9 gave to the question about whether
25 he could be impartial as to PPD, he said I would have to,

1 versus the answer he gave with regard to Dr. Menninger, which
2 was simply yes, and that it indicates that there is some kind
3 of bias in his view of the two parties.

4 THE COURT: What do you think, Mr. Hannon?

5 MR. HANNON: I would disagree with that. I think
6 the overall impression was the witness was communicating to
7 the Court that whatever past life experience that he had a
8 very, very long time ago, that he would put that aside.

9 THE COURT: I'm inclined to overrule the objection
10 for cause, because I did think that while it clearly was a
11 significant personal experience, it's -- the facts are very
12 different than in this case. And he seemed to understand
13 that and seemed to understand the difference between what
14 happened to him and what happened here, but I'll think about
15 the point you make about the way he answered the questions.
16 I'll just reserve on juror number 9.

17 (Juror number 10 present.)

18 THE COURT: Good morning.

19 THE JUROR: Good morning.

20 THE COURT: You answered yes to knowing some of the
21 companies, I think.

22 THE JUROR: Yes.

23 THE COURT: Which one?

24 THE JUROR: Bristol Myers Squibb.

25 THE COURT: And what's your -- how do you know

1 them, or what do you do with them?

2 THE JUROR: My firm, Spencer Thomas Group, provides
3 human capital management consulting services, and we have an
4 active MSA where we provide payroll and HR across North
5 America, as well as globally.

6 THE COURT: So what units do you deal with at that
7 company?

8 THE JUROR: In regards to payroll, so they -- they
9 have a -- well, we have provided services in regards to how
10 they process their payroll, in terms of the system itself.
11 So we would be doing system improvements, as well as
12 providing back filling of resources during a stressful time
13 for them, where, basically, putting more bodies at work to
14 help them out.

15 THE COURT: In the payroll unit?

16 THE JUROR: Yes.

17 THE COURT: You don't work with the labs.

18 THE JUROR: No, I do not work with the labs.

19 THE COURT: Okay. Either of you have any follow-up
20 questions?

21 MR. HANNON: Nothing here, Your Honor.

22 MS. MANDEL: Nothing here, Your Honor.

23 THE COURT: Thank you.

24 (Juror number 10 not present.)

25 (Juror number 11 present.)

1 THE COURT: Good morning.

2 THE JUROR: Good morning.

3 THE COURT: So you answered yes to the question
4 about knowing or working with some of those different
5 companies whose names I read to you.

6 THE JUROR: Yes. I'm a field service engineer and
7 a lot of my clients are BMS, GSK. I work for a biotech
8 company.

9 THE COURT: And what do you do with those other
10 companies?

11 THE JUROR: I install equipment at their sites, and
12 I go in and do preventive maintenance, trainings.

13 THE COURT: All right. Would these be at
14 manufacturing facilities; not at the labs?

15 THE JUROR: I work in labs, as well, the GNP Labs,
16 as well. Our machines enhance the drug-making process at
17 these pharmaceutical companies.

18 THE COURT: All right. Anything about that that
19 would make it difficult for you to be fair and impartial in
20 this case?

21 THE JUROR: No.

22 THE COURT: All right. And as far as you know,
23 you've never worked with Dr. Menninger or PPD's labs?

24 THE JUROR: No.

25 THE COURT: Okay.

1 Either of you have any follow-up?

2 MR. HANNON: Nothing here, Your Honor.

3 MS. MANDEL: Nothing here, Your Honor.

4 THE COURT: All right. Thank you.

5 (Juror number 11 not present.)

6 (Juror number 14 present.)

7 THE COURT: Good morning. Come right up here. Hi.
8 So you answered yes to the hearing question?

9 THE JUROR: Yes.

10 THE COURT: So did you have any difficulty hearing
11 my questions?

12 THE JUROR: I heard about half to three quarters of
13 what you said earlier when we were sitting in here. I've
14 lost about a third of it. I was able to surmise a lot of
15 what you said by the words I heard in between, the connecting
16 words, which is why I was able to answer the hearing
17 question, because I heard "hearing." But I did lose a lot.
18 And I didn't hear anybody's name, but I knew I did not
19 recognize any of them --

20 THE COURT: All right.

21 THE JUROR: -- when they spoke.

22 THE COURT: And what is the nature of your hearing
23 difficulty?

24 THE JUROR: I have hearing loss. I wear hearing
25 aids. And right now they're at a level where I got them as

1 high as I could, on my app on my phone, which is downstairs,
2 without having all the other sounds bombard me, all of that
3 paper wrestling back there sounded like thunder claps going
4 on where I was having a hard time hearing people speak.

5 THE COURT: So let me ask you this, then. It would
6 be a little different when you're on the jury. So when
7 you're on the jury, there would be two differences, I think.
8 One would be that there generally isn't any other noise in
9 the courtroom.

10 THE JUROR: Thank goodness.

11 THE COURT: And so we speak only one person at a
12 time.

13 THE JUROR: Uh-huh.

14 THE COURT: And so that often helps. So that's one
15 difference.

16 The second difference is that generally the witness
17 and I and the lawyers speak -- is it different now than --

18 THE JUROR: Oh, yeah, I can hear you so much better
19 now.

20 THE COURT: So the second difference is, I will
21 make sure that everybody speaks into their microphone. So
22 what often happens, even for people who don't have a hearing
23 problem, is a particular witness -- the witnesses sit where
24 you're sitting, they might sit back, maybe they're quiet, and
25 so then I will tell them move the microphone forward, and

1 speak up.

2 And all you have to do, if you're in the jury, is
3 raise your hand and boom. No problem.

4 THE JUROR: Oh, good. Because that was one of my
5 biggest fears coming. I said what if I don't hear
6 everything? How am I going to make a decision?

7 THE COURT: Right. So your job as a juror is
8 simply to raise your hand if you can't hear everything. My
9 job as the Judge and everyone else -- is to make sure
10 everyone speaks loudly enough. So if you're not hearing it,
11 that's not your fault, that's our fault, or my fault, and so
12 I will make -- and we'll have people repeat things, whatever.
13 So as long as you can hear me now through the microphone, no
14 problem.

15 THE JUROR: Through the microphone, I have no
16 problem with you.

17 THE COURT: Okay. Great. All right. Then I think
18 you'll be good.

19 THE JUROR: All right.

20 THE COURT: Great. Thank you.

21 (Juror number 14 not present.)

22 (Juror number 15 present.)

23 THE COURT: Good morning.

24 THE JUROR: Good morning.

25 THE COURT: If I have it right, you answered yes to

1 the question about there was something about this case that
2 might make it difficult for you to be fair and impartial.

3 THE JUROR: Yes.

4 THE COURT: Tell me about that.

5 THE JUROR: So currently I'm an engineer and a
6 supervisor at a large defense contractor. So not necessarily
7 specifically a case like this, but instances where people
8 might have circumstances where they can't do their job as
9 advertised, so I certainly have a -- have an opinion on kind
10 of how, from a supervisor's perspective, kind of how that --
11 how that conversation might go. And obviously, there's two
12 sides, but you know, the company might not necessarily have
13 an obligation to make accommodations for someone,
14 necessarily, although it might be in their interest, that is
15 outside of the role as advertised.

16 THE COURT: So I guess the question is this.
17 Dr. Menninger was an employee of PPD.

18 THE JUROR: Uh-huh.

19 THE COURT: She made a disclosure to them about
20 certain conditions and requested certain accommodations. And
21 she's suing, alleging the things that I described to you.
22 And the company denies that they did anything wrong. Their
23 position is they responded properly, and her position is they
24 didn't. And that's, in a nutshell, what the case is about.
25 And the question really is the fact that you've been a

1 supervisor, the fact that you've heard such things doesn't
2 necessarily disqualify you, because we want people from a
3 range of experiences. On the other hand, what I'd like to
4 know is whether you can, first, listen to Dr. Menninger's
5 evidence and arguments, and fairly and impartially evaluate
6 them in the case.

7 Or are you going to be thinking, you know, I sit at
8 Raytheon all day long, and there's -- like I've had Jill came
9 to me, or Jane came to me, or whomever, and I didn't believe
10 them, and that, like, totally colors -- and you're not really
11 going to listen and make an individual decision about
12 Dr. Menninger's case?

13 THE JUROR: Yeah, I think that -- you know, I
14 guess, as it's laid out, if those accommodations were laid
15 out beforehand, prior to kind of the whole being agreed upon
16 and what have you, then that certainly would change my
17 perspective on things.

18 THE COURT: I guess my question, though, is like
19 whether you think you could fair -- like you could listen to
20 this evidence in this case and, under the instructions as I
21 give it to you, and decide this case, based on that -- first,
22 like, in the sense of knowing yourself, okay, and all you've
23 done, if you were Dr. Menninger's brother, okay, and knew she
24 had this case, and you know yourself and you thought you were
25 going to be on the jury, would you feel like she's going to

1 get a fair shake from you on the jury. And a fair shake is
2 someone who listens to all the evidence, and decides that
3 based on what happens in the courtroom, as opposed to coming
4 in with a sort of preconception about whatever it is. And I
5 guess my first question, I have another one, but the first
6 one is whether in that role, would you, knowing yourself,
7 feel like, oh, no, you, juror number 15, would be -- would
8 look at yourself and say, oh, yeah, I could give her a fair
9 shake and be fair to her.

10 THE JUROR: I think I could do that. And I think a
11 lot hinges on the initial agreement between the company and
12 the person kind of started off. But, yes, I could listen to
13 the evidence and --

14 THE COURT: And do you feel like if you were, you
15 know, brother of the company, so to speak, if such a thing
16 exists, but -- or you'd also would be -- could be fair to the
17 company?

18 THE JUROR: Yes.

19 THE COURT: Do you feel like you would be, like --
20 do you feel like you're in the middle, or do you feel like
21 you're sort of leaning one way? Honestly.

22 THE JUROR: Maybe so. Again, I think it really
23 depends on how the -- how the role was put out there. And
24 again, if she was able -- if she disclosed kind of these
25 needs and wants that she had going into the role, and that

1 was agreed upon, and the company reneged later and said, you
2 know, I don't remember that, or whatever the case is, then
3 certainly that would kind of change my perspective.

4 Otherwise, I think if you go in to a role and you
5 can no longer do that, regardless of whatever reasons, then
6 the company doesn't necessarily require themselves to
7 accommodate them.

8 THE COURT: What do you do if the company changes
9 the role and the person discloses, as opposed to the person
10 hadn't disclosed at the beginning, and so they disclose
11 later. Does that change it?

12 THE JUROR: Yes.

13 THE COURT: And what about if the company changes
14 the role?

15 THE JUROR: I think if they change the role, then,
16 yeah, that certainly changes things.

17 THE COURT: Okay. Either of you have follow-up
18 questions?

19 MR. HANNON: I do, Your Honor.

20 But what if the fact scenario were that the
21 employee went into the role, did not disclose her disability,
22 and then after they were already in the role, then disclosed
23 and asked for accommodation, under that fact scenario, would
24 you have a hard time giving them a sort of fair shake, as the
25 judge said?

1 THE JUROR: I probably would.

2 MR. HANNON: That's all I have.

3 THE COURT: Anything for you, Ms. Mandel?

4 MS. MANDEL: No, thank you.

5 THE COURT: All right. Thank you very much.

6 (Juror number 15 not present)

7 MR. HANNON: Judge, I challenge for cause. I think
8 the --

9 THE COURT: I'm going to allow that. I just don't
10 think that -- he has such a strong. It's evident to me that
11 he has a strong feeling about these things based on his
12 experience and particularly with respect to if they didn't
13 disclose at the beginning and our case is not a disclosure at
14 the beginning, and I don't think -- that's not my
15 understanding of the law that you're necessarily required to
16 disclose at the beginning, in order to get a reasonable
17 accommodation. And so I think it's -- it's too much -- he
18 has too strong a view about a particular way it should go.
19 So he's excused for cause. That is allowed.

20 Number 16.

21 (Juror number 16 present.)

22 THE COURT: This is juror number?

23 MS. DORE: 16. I'm going to pole juror number 5.

24 THE COURT: Yes, that's perfect.

25 So you have trouble understanding English?

1 THE JUROR: I'm not 100 percent confident about
2 that. I will say most of the time, I can understand English,
3 but occasionally, like I watch a movie a few days ago for
4 Avatar, I found that some of the English I do not understand.

5 THE COURT: Okay. Did you understand all of my
6 questions?

7 THE JUROR: Yes, I understand.

8 THE COURT: And how long have you -- English was
9 not your first language?

10 THE JUROR: Yes. Correct. Yeah. English was not
11 my native language.

12 THE COURT: And when did you learn English? How
13 old were you?

14 THE JUROR: I come to the United States in -- when
15 I was about 29 years old. I start to learn English in my
16 college and also high school, middle school years, but those
17 times, I was in China, and so it's most of -- most of the
18 time it's just reading and writing. And so about listening
19 and speaking, I really started to learn after I come to the
20 United States.

21 THE COURT: And how long have you been in the
22 United States? About.

23 THE JUROR: Yeah, it's about 23 years. Let's
24 see -- no, 24 years.

25 THE COURT: Do you feel -- and your work as an

1 engineer, I take it, you spend a fair amount of time speaking
2 to people in English.

3 THE JUROR: Typically, that's not a problem for me,
4 yeah.

5 THE COURT: Okay. Do you feel like, based on the
6 questions that I asked you, you said you understood all of
7 that?

8 THE JUROR: Yeah, I would say 95 percent, I
9 understand. Some -- the only times maybe I was not paying
10 attention or maybe I was not seated in the front row or
11 something like that.

12 THE COURT: Okay.

13 Either of you have any follow-up questions.

14 MR. HANNON: Nothing here.

15 MS. MANDEL: Nothing here, Your Honor.

16 THE COURT: All right. Thank you.

17 (Juror number 16 not present.)

18 MS. DORE: I got juror number 5.

19 THE COURT: Yes.

20 So juror number 5 did not raise his hand to any
21 questions, but he told Ms. Dore that he should have. And so
22 I don't know what it is, but we'll speak to him.

23 (Juror number 5 present.)

24 THE COURT: Hi. Come on in. Come right up here.

25 What did you want to bring to my attention?

1 THE JUROR: So I do work for a biotech that
2 collaborates with GSK, GlaxoSmithKline.

3 THE COURT: Okay. And what kind of work does your
4 company do with GSK?

5 THE JUROR: So we develop drugs and we do that by
6 doing computational analysis and GlaxoSmithKline pays us to
7 do computational analysis to potentially identify other
8 drugs.

9 THE COURT: So you don't work with labs?

10 THE JUROR: With what? Lab.

11 THE COURT: Labs? Testing labs?

12 THE JUROR: No.

13 THE COURT: Okay. Do either of you have any
14 follow-up questions?

15 MS. MANDEL: No, Your Honor.

16 MR. HANNON: Yes, if I may.

17 Does your work involve any analysis or review of
18 data generated by laboratory analysis?

19 THE JUROR: Yes. Within the company, but not from
20 outside labs.

21 MR. HANNON: So your lab.

22 THE JUROR: We are a research organization, so we
23 do a lot of analysis.

24 MR. HANNON: Okay. Thank you.

25 THE COURT: Thank you. Thank you for bringing that

1 up.

2 (Juror number 5 not present.)

3 THE COURT: Sam, number 17.

4 (Juror number 17 present.)

5 THE COURT: Right up here. Good morning.

6 THE JUROR: Good morning.

7 THE COURT: So you answered yes to the scheduling
8 question.

9 THE JUROR: Yes. I run a private daycare, and
10 after COVID, for me to shut down, these parents have nowhere
11 to --

12 THE COURT: So you run the -- are you the --

13 THE JUROR: I'm the sole proprietor and the only
14 person and I'm licensed for eight children. It's a family
15 home child care.

16 THE COURT: Oh, okay.

17 THE JUROR: So seven of the parents, because I have
18 one opening, will not have child care.

19 THE COURT: So what did you do today?

20 THE JUROR: They were all notified when I was
21 notified.

22 THE COURT: I see. Okay. I understand. So if you
23 come here -- what are your hours?

24 THE JUROR: 7:40, my first two arrive and then
25 7:15, until 4 o'clock.

1 THE COURT: So if you come here, no -- you close.

2 THE JUROR: I close.

3 THE COURT: And then if you close, no income,
4 because you only make money when they come.

5 THE JUROR: Correct. Although my contracts cover
6 me, because this is like the fourth time I've been called for
7 three days.

8 THE COURT: They cover you for three days --

9 THE JUROR: Right.

10 THE COURT: -- in terms of pay.

11 THE JUROR: Correct.

12 THE COURT: But not in terms of the dislocation to
13 the parents. They suffer that.

14 THE JUROR: Yes.

15 THE COURT: But after three days, you don't get
16 paid.

17 THE JUROR: Correct.

18 THE COURT: Okay. I'll excuse you from this jury.

19 THE JUROR: Okay.

20 (Juror number 17 not present.)

21 (Juror number 18 present.)

22 THE COURT: That new economy makes it harder and
23 harder to pick jurors. It makes it harder to pick people who
24 run their own thing like that.

25 Good morning.

1 THE JUROR: Good morning.

2 THE COURT: So you answered yes to a number of
3 questions. I'll start with the scheduling question.

4 THE JUROR: Yeah.

5 THE COURT: Tell me about that.

6 THE JUROR: Two main things. One I have a skin
7 check for skin cancer that I tried to reschedule, and they're
8 scheduling out until August, and I have a few things of
9 concern.

10 THE COURT: When is that appointment?

11 THE JUROR: Tomorrow.

12 THE COURT: What time?

13 THE JUROR: 2:00, so that wouldn't be too much of a
14 problem.

15 THE COURT: Where?

16 THE JUROR: In Newburyport.

17 THE COURT: It's in Newburyport at 2:00?

18 THE JUROR: Yeah.

19 THE COURT: I mean, you'll be out at 1:00.

20 THE JUROR: I could drive the speed limit there.

21 Second is, I'm a keynote speaker next weekend at an
22 event in --

23 THE COURT: When is the event?

24 THE JUROR: It's Friday morning.

25 THE COURT: Oh, what kind of a -- like a work

1 event?

2 THE JUROR: Yeah.

3 THE COURT: And you're the main speaker?

4 THE JUROR: Correct. And I'm a professor and I
5 would be missing 21 classes in the next two weeks, and
6 doable; problem is it would be a lot to manage and we teach
7 in person. So those are three things, schedulingwise, that
8 came up.

9 THE COURT: Okay. And you also answered yes to the
10 question about a civil lawsuit or a lawsuit similar to this
11 one?

12 THE JUROR: Well, my mom, actually, was -- I went
13 to court with her when I was younger because the car sales
14 people miss -- tried to resell her her car engine and so we
15 went to civil court in Connecticut. And then also I was
16 wrongly accused of stealing and misappropriating funds at a
17 job when I was younger and was fired for that. So long ago,
18 but it made an impact.

19 THE COURT: And the job -- I take it the one with
20 your mom has nothing -- wouldn't affect you in this case, at
21 all.

22 THE JUROR: No, but it happened, so I raised my
23 hand.

24 THE COURT: Yeah. And in terms of the job one,
25 that was a long time ago?

1 THE JUROR: Yeah.

2 THE COURT: And did they -- they accused you and
3 fired you?

4 THE JUROR: Uh-huh.

5 THE COURT: Did they sue you, or no?

6 THE JUROR: No, it was in a restaurant.

7 THE COURT: Oh, I see. So that was sort of -- in
8 terms of -- between you and them, that was the end of it?

9 THE JUROR: Correct.

10 THE COURT: I see. And anything about that
11 experience that would make it hard for you here in this case?

12 THE JUROR: It left an impression, to be falsely
13 accused.

14 THE COURT: Yeah.

15 THE JUROR: So it left an impression. I mean, I
16 can say that I would divorce myself from that.

17 THE COURT: What's the keynote event?

18 THE JUROR: The keynote event is --

19 THE COURT: Yeah.

20 THE JUROR: -- I'm speaking at a professional
21 development day for the staff at Northern Essex Community
22 College on risk.

23 THE COURT: On risk?

24 THE JUROR: Uh-huh.

25 THE COURT: What kind of risk?

1 THE JUROR: Emotional risk and recovery from the
2 COVID situation with the college student campus and
3 professors and their wellbeing. I actually work in the
4 mental wellbeing space, so that also might be something.

5 THE COURT: I see. So that's -- you're giving the
6 keynote address at that event?

7 THE JUROR: Yeah.

8 THE COURT: And that's this Friday or next Friday?

9 THE JUROR: Next Friday morning.

10 THE COURT: Next Friday morning at what time?

11 THE JUROR: That is at 8:30.

12 THE COURT: I see, and about how many people do you
13 think attend that event?

14 THE JUROR: I think 75.

15 THE COURT: Uh-huh. And how long has it been
16 planned?

17 THE JUROR: Oh, a couple of weeks. I spoke
18 previously, so they asked me to come back.

19 THE COURT: Okay. And anything about your -- what
20 about your work in the mental health space?

21 THE JUROR: I am trained as a psychologist and work
22 as a psychologist in the therapeutic realm, and also in
23 sports psychology. I have a current business that is
24 WholeHealth Sport, where we teach coaches and athletes to
25 advocate for their mental health and mental wellbeing in the

1 sports space. We certify people in mental health first aid.
2 So I'm a trainer for mental health first aid and then I also
3 work in the corporate space as a wellbeing coach.

4 THE COURT: And do you think any of that would make
5 it hard for you to be fair and impartial for either side in
6 this case?

7 THE JUROR: To be honest, it might, the advocacy
8 piece, because there's been such a -- trying to change the
9 narrative on mental health in the world and in the sport
10 space, in particular, and in the work space. And one other
11 thing that I didn't raise my hand for was I'm not a
12 supervisor, but as a professor, I have to respond to requests
13 for accommodation very frequently, and certainly much more
14 since COVID. And so I know it's not a monetary exchange, but
15 it's a combination for classes, for assignments, et cetera,
16 et cetera.

17 THE COURT: Okay. Either of you have any follow-up
18 questions?

19 MR. HANNON: Nothing here. Thank you.

20 MS. MANDEL: Nothing here, Your Honor.

21 THE COURT: All right. Thank you very much. Let
22 me talk to the lawyers for a minute.

23 (Juror number 18 not present.)

24 THE COURT: You're objecting?

25 MS. MANDEL: Yes, Your Honor.

1 THE COURT: I think I'm inclined to excuse her, in
2 part for schedule -- it's going to be really hard for her to
3 get to Newburyport for her doctor's appointment. It's going
4 to be -- to me, the event is on the cusp, her keynote
5 address, they probably could get someone else, but it's
6 planned, it's reasonably big. It has a lot of people. So
7 the schedule gives me -- I think I'm inclined to -- and given
8 her -- what her own acknowledged, I don't think I could be --
9 have a certain advocacy perspective, so I excuse her for
10 cause.

11 So we'll see number 19, Sam.

12 (Juror number 19 present.)

13 MS. MANDEL: Your Honor, can we move the microphone
14 a bit closer to the chair?

15 THE COURT: Yeah, I'll tell the next juror.

16 MS. MANDEL: I'm having a hard time hearing.

17 THE COURT: No problem.

18 Good morning. Have a seat, and pull the microphone
19 up close. There you go.

20 So you answered yes to the question about, if I
21 have it right, there's something about this case that might
22 make it difficult for you to be fair and impartial?

23 THE JUROR: Yeah.

24 THE COURT: What is it?

25 THE JUROR: It sounds like it's a lot about social

1 anxiety, and I deal with that myself.

2 THE COURT: You, yourself, suffer from that?

3 THE JUROR: Yeah.

4 THE COURT: Okay. And do you think that you could
5 be -- so how do you think that would affect you in terms of
6 resolving this case?

7 THE JUROR: Your Honor, I don't -- you know, you
8 really put yourself in the seat of that person, you know,
9 because you feel like you're --

10 THE COURT: You feel like it's you.

11 THE JUROR: Yeah. Yeah.

12 THE COURT: Okay. All right. Okay. I'll excuse
13 you from this case.

14 THE JUROR: Okay.

15 THE COURT: Thank you for telling me.

16 THE JUROR: Yeah.

17 (Juror number 19 not present.)

18 MR. HANNON: I'm sorry, Judge, just before the next
19 juror, I was going to ask why he wasn't asked whether or not
20 he could put that aside.

21 THE COURT: I'll bring him back, if you want.

22 MR. HANNON: Please.

23 THE COURT: Afterwards, I'll tell you why I didn't,
24 but it's a fair point. I felt like it was such a strong
25 identification, it would be difficult for him to separate.

1 That's why I didn't ask, but it's a fair point.

2 (Juror number 19 present.)

3 THE COURT: My apologies for bringing you back.
4 Just one or two more things that I wanted to ask you.

5 THE JUROR: Yeah.

6 THE COURT: So do you think you could be fair and
7 impartial in this case?

8 THE JUROR: You know, I -- I think so, you know.

9 THE COURT: I can't hear you.

10 THE JUROR: Yeah. I think so, yeah.

11 THE COURT: Do you feel like you suffering -- or
12 your description of your condition being one of the
13 conditions that Dr. Menninger put out, would give you such an
14 identification with her that it might be difficult for you to
15 separate that, to evaluate the case fairly and impartially
16 for both sides?

17 THE JUROR: I -- you know, I just think I would be
18 able to look at it fairly. I just -- you know -- yeah.

19 THE COURT: Let me ask you this way. Suppose you
20 were -- suppose the defendant, PPD, the company, was your
21 sibling's company, or, you know, somebody close to you, and
22 knowing yourself. And you were thinking about them, would
23 you say to them, oh, juror number 19 could be fair and
24 impartial to you. He'll give you a fair shake, listen to
25 everything. Or would you say, hmm, his experience is so

1 strong, and his identification, or whatever else with the
2 plaintiff is such that he won't be able to be fair? Knowing
3 yourself.

4 THE JUROR: Yeah, I, you know, just try to -- I
5 think I would be impartial and fair. I would try to approach
6 things that way.

7 THE COURT: Okay. So you feel like -- you feel
8 like you can comfortably -- you could comfortably listen to
9 all the evidence, and if you believe that Dr. Menninger has
10 not proven her claim or claims that the company discriminated
11 against her based on her social anxiety or panic disorder and
12 that they didn't retaliate against her, that you would then
13 comfortably rule for the defendant?

14 THE JUROR: Yeah. Yeah.

15 THE COURT: That wouldn't pose any discomfort?

16 THE JUROR: No.

17 THE COURT: And if you felt like she proved her
18 claims, one or both of her claims, then you could comfortably
19 rule for her?

20 THE JUROR: Yes.

21 THE COURT: Any hesitation either way?

22 THE JUROR: No. No.

23 THE COURT: Okay. Any follow-up questions?

24 MR. HANNON: No, Your Honor.

25 THE COURT: Any for you, Ms. Mandel?

1 MS. MANDEL: No, Your Honor.

2 THE COURT: All right. Why don't you step outside
3 for a minute. Let me talk to the lawyers. Thank you.

4 (Juror number 19 not present.)

5 THE COURT: Go ahead.

6 MS. MANDEL: Your Honor, I'm concerned that the
7 juror gave two different sets of answers. He said, during
8 the first set of questioning, that he would feel like it was
9 him and it would be hard to separate himself. And then he
10 gave a different set of answers just now, so there --

11 THE COURT: He said that the first time he was in
12 here?

13 MS. MANDEL: He said it would feel like it was him.
14 So this is somewhat conflicting. So, if nothing else, it
15 shows that there is some inner conflict there. Which I
16 assume the basis for Your Honor's original decision to excuse
17 him.

18 THE COURT: Well, the original decision was, yes, I
19 felt like his -- the proximity of his condition, the
20 similarity of his condition to Dr. Menninger's and the risk
21 or the potential for self-identification, as sort of that's
22 me, as opposed to being more neutral, coming at it more
23 neutrally, that's why I excused him originally.

24 What do you say, Mr. Hannon?

25 MR. HANNON: I think there's risk of

1 self-identification on both sides and we've had supervisory
2 employees here who have suggested some -- that they've had
3 experiences, and we've taken them at their words. And I
4 think we have to be very, very careful that just because this
5 individual has a mental health issue that we're not somehow
6 discounting the assurances that they provide regarding
7 their --

8 THE COURT: No, I don't think -- I agree with that.
9 And I don't think it's that he has a mental health issue, I
10 think it's that he has the -- he describes himself as having
11 the same condition -- the very same condition, and that's the
12 risk of self-identification, I think. I mean, it depends on
13 the supervisor. I don't think that it's an automatic
14 exclusion because he has a mental health condition, for sure,
15 or even potentially the same.

16 I think I'm still -- I mean, he did say he could be
17 fair and impartial, but he gives me pause that the
18 self-identification, that seems -- that's sort of similar to
19 the supervisor I excused, who is like -- had a certain view
20 of how -- he had it -- it wasn't self-identification,
21 exactly, but he had a sort of rubric that he thought about it
22 in that didn't seem open.

23 So I think, on balance, given that, those answers,
24 despite his assurances, I think I'm going to excuse him for
25 cause, for that reason. I think it's too close, given what

1 he said the first time.

2 Juror number 20.

3 (Juror number 20 present.)

4 THE COURT: Good morning.

5 THE JUROR: Good morning.

6 THE COURT: So you answered yes to two questions,
7 one was the scheduling question. Tell me about that.

8 THE JUROR: Yes, sir. I'm a full-time pilot, I
9 travel internationally and domestically. My schedule comes
10 out 30 days in advance. Right now I know my schedule through
11 April 3rd. I don't know what my schedule will be after that.
12 So I spend eight days at home and usually 20 days a month
13 abroad.

14 **Q.** And so what does the trial do to you this week or next
15 week?

16 THE JUROR: Right now I'm home day 3. I'm
17 scheduled to depart Sunday.

18 THE COURT: And couldn't that be rearranged?

19 THE JUROR: I work for a small company. We have
20 about 15 pilots. It probably could be done. It's a
21 California company. I'm not really too sure of the policy.
22 I'm sure it could be done, but --

23 THE COURT: Okay. And then you also answered yes
24 to the question that there was something about the fact that
25 the plaintiff is seeking money damages.

1 THE JUROR: Right.

2 THE COURT: What about that?

3 THE JUROR: I guess my premise for that is just
4 from what I heard, based on what the trial is about,
5 preexisting conditions, to me, maybe I've already made up my
6 mind on the way the outcome of the trial might be. Just a
7 preexisting condition to me is a condition that probably you
8 could -- there are other ways of, instead of monetary
9 compensation to determine whether or not somebody -- the
10 outcome -- it shouldn't have a bearing on the trial, whether
11 there's a guilty or nonguilty on monetary. A reward at the
12 end shouldn't have anything to do with it.

13 THE COURT: Well, so, the jury decides -- there's
14 two parts to every case. Really, one part is what we call,
15 in a civil case, liability. So the plaintiff bears the
16 burden to establish liability; that is, that the defendant
17 did something under the law wrong. It's not criminal, or
18 anything like that, but did something -- so, for example,
19 here, the claim is that she was discriminated against based
20 on a disability, or retaliated against for asking for
21 accommodations. Both of which, if proven, would be -- each
22 would be a violation of law. So that would be her burden.
23 If she proves -- if she doesn't prove that to the jury,
24 that's the end. That is, if she doesn't prove her claims.
25 If she proves one or all of her claims, then the jury would

1 be tasked to determining what damages she's proven. And
2 so -- and then the jury would decide what damages she has
3 proven by a preponderance of the evidence.

4 And so the question of damages is separate from the
5 question of liability, but it follows. If there is
6 liability, then you consider that question.

7 THE JUROR: Correct.

8 THE COURT: So is there something about the fact
9 that, if she proves liability, that she would be seeking
10 damages that would make it hard for you to be fair and
11 impartial?

12 THE JUROR: Yeah, I think seeking damages would --
13 shouldn't necessarily come from the company, but it probably,
14 you know, with regards to mental illness, it probably should
15 be something that, whether it's a state or federal funding
16 programs, that provide help for people like that.

17 THE COURT: Well, I guess the way damages work
18 under the law would be, for example, if you were -- you fly
19 your plane with your hands, right?

20 THE JUROR: Correct.

21 THE COURT: Not with your feet.

22 THE JUROR: Both, actually.

23 THE COURT: Both. All right. Both feet?

24 THE JUROR: Yes.

25 THE COURT: Okay. And you wear glasses.

1 THE JUROR: I do.

2 THE COURT: But that's okay for flying?

3 THE JUROR: It is for the type of flying we do.
4 You have to have corrected vision to 20/20.

5 THE COURT: Vision. Right. Okay.

6 So suppose your vision declined a little bit and
7 you needed stronger glasses, but it was within the scope of
8 being able to do your job.

9 THE JUROR: Yes.

10 THE COURT: And you asked them to accommodate you
11 and to let you continue to fly with your stronger glasses.

12 THE JUROR: All right.

13 THE COURT: What I'm describing is not this case.

14 THE JUROR: Sure.

15 THE COURT: And they terminated you, because they
16 said no, we're not -- they terminated you. You might sue
17 them, because you said they didn't accommodate you and you
18 would have to prove that you were discriminated against under
19 the law, and that you could do the essential features of the
20 job, and the accommodation you're asking for is reasonable,
21 or so forth, whatever. And if you prove your claim and you
22 prove the elements of your claim, then you would seek
23 damages, you might ask for damages, and the damages might be
24 that -- and you got -- so they terminated you and you were
25 out of work for a period of time, and then you got a job for

1 another company, flying a plane, making similar money.

2 THE JUROR: Sure.

3 THE COURT: But your claim for damages might be,
4 for example, the amount of money that you didn't earn during
5 that period of time. There are other kind of damages you
6 could and might claim. But that wouldn't -- you might get
7 unemployment, maybe, but you might not, depending on the
8 rules and how that applies to people getting fired. But
9 that's what your claim would be and the law recognizes and
10 allows for that. That's provided for. There are all sorts
11 of circumstances.

12 So I guess that's what you're uncomfortable with.
13 You feel like because it's a disability, the person should
14 get it from the federal government or the state government,
15 or something, but not from the private employer.

16 THE JUROR: Yeah. That would be my feeling. And
17 what you just described, there are other avenues for --
18 because we're talking about pilots, where you become an
19 instructor, where your vision -- where you're actually
20 outside of a cockpit. You're in an environment where you're
21 actually doing instruction. So there are always avenues to
22 compensate for, you know, if you can't meet certain
23 requirements.

24 THE COURT: All right. Any questions for either of
25 you?

1 MR. HANNON: No, Your Honor.

2 MS. MANDEL: No, Your Honor.

3 THE COURT: Okay. Why don't you step outside for a
4 minute, sir.

5 THE JUROR: Sure.

6 (Juror number 20 not present.)

7 MR. HANNON: I do challenge for cause.

8 THE COURT: I'm going to excuse him for cause. He
9 clearly doesn't agree with the system that we have.

10 Juror number 21.

11 (Juror number 21 present.)

12 THE COURT: Have a seat right in the box and just
13 pull the microphone close to you.

14 So one of the questions you answered yes to was you
15 thought you had a bias or prejudice or some other reason that
16 might make it hard to be fair and impartial in this case?

17 THE JUROR: That's true.

18 THE COURT: What is that?

19 THE JUROR: Well, I'm a special education teacher
20 and I have experience with -- of both personal and with
21 providing students with accommodations. I -- early in my
22 career, I was let go from two different jobs, one of which I
23 was in line to get accommodations for for paperwork. And it
24 didn't work out for me. I got let go before the
25 accommodations went into effect. And then a second job I

1 had, I had only been there on a temporary basis, and a parent
2 came forth and said -- made comments that I had submitted
3 letters to her in which I misspelled words incorrectly, which
4 is part of my learning disability, and that was the only
5 reason I was given as to why I was let go from that position.

6 THE COURT: And do you feel like that would make it
7 hard for you to be fair and impartial in this case?

8 THE JUROR: Yes. Yes. Yes.

9 THE COURT: You don't feel like you could listen to
10 the company's evidence fairly; you feel like you would sort
11 of have a thumb on the scale?

12 THE JUROR: I would feel like, yeah. Yeah.

13 THE COURT: Either of you have any follow-up
14 questions?

15 MR. HANNON: No, Your Honor.

16 MS. MANDEL: I just have one follow-up question,
17 Your Honor.

18 THE COURT: Sure.

19 MS. MANDEL: You mentioned that you have experience
20 with providing students with accommodations?

21 THE JUROR: I do.

22 MS. MANDEL: Did any of those students requesting
23 accommodations request accommodations in connection with
24 anxiety disorders?

25 THE JUROR: Absolutely, yes.

1 MS. MANDEL: And what about panic disorders?

2 THE JUROR: Panic disorders? I feel, as a board
3 certified analyst, I believe both of them fall in line
4 together.

5 MS. MANDEL: Thank you.

6 THE COURT: All right. Thank you very much.

7 (Juror number 21 not present.)

8 THE COURT: I'm going to excuse him for cause. He
9 said that he can't be fair.

10 Next juror, 22.

11 (Juror number 22 present.)

12 THE COURT: Hi.

13 THE JUROR: Hi.

14 THE COURT: Just pull the microphone close to you.

15 THE JUROR: I'm sorry?

16 THE COURT: Pull the microphone close to you.

17 THE JUROR: Okay. Sorry.

18 THE COURT: No problem.

19 So I think you answered yes to one question, just
20 that you thought there might be a reason you couldn't be fair
21 and impartial. Can you tell me about that?

22 THE JUROR: Well, Your Honor, don't ask me why, but
23 situations like this make me very nervous. I couldn't sleep
24 last night. I couldn't have breakfast this morning. I went
25 to the wrong court and -- sorry. And my hands are sweaty.

1 I'm all fidgety and I just can't control it.

2 THE COURT: So just being here.

3 THE JUROR: Right. Makes me very, very nervous and
4 uncomfortable.

5 THE COURT: We're so nice, though.

6 THE JUROR: Yes, but it's just me. It's just my
7 reactions. I can't control it.

8 THE COURT: I see. Okay. What do you do for work?

9 THE JUROR: I'm a secretary.

10 THE COURT: Where?

11 THE JUROR: Revere Schools.

12 THE COURT: And how is that?

13 THE JUROR: Good.

14 THE COURT: Okay. But you just feel like -- but
15 you got here. You managed to get here on time, even though
16 you went to the wrong court.

17 THE JUROR: I did.

18 THE COURT: Some people go to the right court and
19 can't get here on time. So you're ahead of them.

20 THE JUROR: And I left the phone, just like
21 everyone -- like I was on the letter, so I did what --
22 previous to arriving this morning, they were like, you have a
23 cell phone, I was like, no, I read the letter, and I left it
24 at home.

25 THE COURT: Uh-huh. So do you feel like that now

1 that you've been here that you could serve?

2 THE JUROR: No, I'm over here shaking. My hands
3 are sweating. I just can't.

4 THE COURT: Okay. All right.

5 Do either of you have any questions that you wish
6 to ask this juror?

7 MR. HANNON: No, Your Honor.

8 MS. MANDEL: No, Your Honor.

9 THE COURT: All right. I'll excuse you from
10 service. No problem.

11 (Juror number 22 not present.)

12 THE COURT: Must be all of you intimidating her,
13 because it wasn't me. She said I was nice.

14 (Juror number 23 present.)

15 THE COURT: Hi, how are you doing?

16 THE JUROR: I'm well. How are you?

17 THE COURT: Good.

18 If I have it right, you answered yes to the
19 questions about difficulty hearing, and maybe difficulty
20 sitting during the trial.

21 THE JUROR: Yes. So I was just, like in November,
22 diagnosed with MS, and I'm having a hard time adapting to it.
23 And I have like three lesions on my brain, so every once in
24 awhile, I can't pick up what's being said, and I have trouble
25 seeing, but moreover, the thing that I'm most nervous about

1 is having to go to the bathroom, because when I have to go, I
2 have to go.

3 THE COURT: So let me tell you a little more about
4 the schedule and see if it might work for you.

5 THE JUROR: Sure.

6 THE COURT: So we start at 9:00 and the jury would
7 come in at 9:00 and sit there. And we go from 9:00 to 11:00,
8 it's for two hours. And then we take a break for about 15
9 minutes and the jury goes back to a conference room right
10 behind -- right back here.

11 THE JUROR: Sure.

12 THE COURT: And there's bathrooms there just for
13 the jurors and there's coffee and refreshments. And there's
14 a 15, sometimes 20-minute break. Come back into the
15 courtroom say 11:20. 11:15, 11:20. And then we go to
16 1 o'clock and then we break. Most days, almost every day,
17 we'll be done at 1 o'clock.

18 Today and next Monday, maybe, after an hour break
19 for lunch, we'll resume from 2:00 to 4:00. So that's the
20 time period we'll be sitting, but at the same time, anyone
21 needs a drink of water, needs to go to the bathroom, for any
22 reason, whether they have MS that makes them go to the
23 bathroom, or they just need to go to the bathroom. Just
24 raise your hand and we'll take a break and so --

25 THE JUROR: It could be an embarrassing situation,

1 which is what I'm trying to avoid, because I don't
2 necessarily have control over --

3 THE COURT: So you might not have a warning.

4 THE JUROR: That's my biggest fear. Yes, sir. And
5 I still am trying to adapt to this whole thing, because it's
6 so new.

7 THE COURT: Uh-huh.

8 THE JUROR: So that's -- I would -- it would be
9 extremely emasculating if --

10 THE COURT: Yeah, yeah. So you might not be in a
11 situation where you would have enough advanced notice, so to
12 speak, to raise your hand and walk out with everyone else.

13 THE JUROR: Correct. And the other thing that
14 happens, too, is if I go into the bathroom, I could be there
15 for some time, because that urge doesn't necessarily leave,
16 whether something is happening or not happening, and it's --

17 THE COURT: It's fine. I'll excuse you from
18 service in this jury.

19 THE JUROR: Thank you.

20 THE COURT: No problem. Good luck with the
21 diagnosis.

22 THE JUROR: Thank you very much.

23 (Juror number 23 not present.)

24 (Juror number 24 present.)

25 THE COURT: Did 24 answer yes to a question?

1 MR. CURRAN: Worked in psychology.

2 THE COURT: That's what I thought. Okay.

3 Juror number 24? All right.

4 Good morning.

5 THE JUROR: Good morning.

6 THE COURT: How are you today?

7 THE JUROR: I'm doing well, thanks. How are you?

8 THE COURT: Good. So you answered yes to you or
9 someone close to you working in psychology or psychotherapy
10 or social work?

11 THE JUROR: Yes.

12 THE COURT: Tell me about that.

13 THE JUROR: My daughter will have her -- she'll be
14 a licensed social worker in May. So she's been in the field
15 of social work, getting her master's in social work.

16 THE COURT: Congratulations.

17 THE JUROR: Yeah. Thank you. I'm proud of her.

18 THE COURT: Anything about that that might affect
19 you in this case?

20 THE JUROR: I don't think so. It's kind of -- she
21 works with adolescents and a couple hospital settings, but I
22 don't -- it doesn't sound related, but --

23 THE COURT: Okay. Any follow-up questions?

24 MR. HANNON: No, Your Honor.

25 MS. MANDEL: Just two follow-up questions.

1 Does your daughter work with people who have either
2 anxiety or panic disorder?

3 THE JUROR: Anxiety.

4 MS. MANDEL: And has your daughter talked to you
5 about the process of being diagnosed or treated with anxiety.

6 THE JUROR: Not specifically. Generally, you know,
7 she might run groups, but I don't know the specifics of how
8 she works with them, really. I know she -- she kind of --
9 she actually gets upset that I don't know more about what she
10 does, but she will generally say, oh, I did this group, or I
11 may have had to have, you know -- she had a difficult, you
12 know, patient one day, but nothing about specifically how
13 like the day-to-day or, you know, what she does with them
14 specifically. If that answers your question.

15 MS. MANDEL: Thank you.

16 THE COURT: Okay. Thank you.

17 THE JUROR: Okay. Thanks.

18 (Juror number 24 not present.)

19 THE COURT: Just to pause for a second, where we
20 are.

21 So I have from the first page --

22 Hold on one second, Sam.

23 Just from the first page, I have I cleared juror
24 numbers 2, 3, 5, 7, 8, 11 -- 10, 11, and 12, which is eight
25 jurors. And I reserved on the for-cause challenge as to

1 juror number 9. So that's eight jurors.

2 And then I have, on the second page, that I cleared
3 juror numbers 13, 14, 16, and 24, which is four more jurors.
4 So I have that we've cleared 12 jurors right now, and have
5 one person that I've reserved on. And everyone else has been
6 excused.

7 Are we both on the same page with that?

8 MR. WATSON: Your Honor, what was the number 15?

9 THE COURT: Oh, I'm sorry. I read that wrong. Let
10 me say that over. On the second page, I cleared juror number
11 13, juror number 14, juror number 16, and juror number 24.
12 Those are the four cleared jurors from the second page, if I
13 have that right.

14 MR. HANNON: That's what I have.

15 MS. MANDEL: That's what we have, as well.

16 THE COURT: Okay. Fine. All right. So next is
17 juror number 25.

18 (Juror number 25 present.)

19 THE COURT: Good morning.

20 THE JUROR: Good morning.

21 THE COURT: So tell me about the scheduling issue,
22 first.

23 THE JUROR: I am a senior tax manager at KPMG and
24 my biggest deadline of the entire year is next week.

25 THE COURT: Oh. Right. Okay.

1 THE JUROR: I have about 500 K-1s to deliver next
2 week.

3 THE COURT: Not next week. We have more than next
4 week. Next week is not April 15th.

5 THE JUROR: It's March 31st and that's when K-1s
6 expire. Their investors are expecting their final K-1s. I
7 have no movement of that date.

8 THE COURT: I understand. That's different. I'll
9 excuse you.

10 Good luck.

11 THE JUROR: That's it?

12 THE COURT: That's it.

13 THE JUROR: Oh, thank you.

14 THE COURT: I would expect that this is a difficult
15 time for you.

16 THE JUROR: I haven't slept in weeks. Thank you,
17 have a good day.

18 THE COURT: You, too.

19 (Juror number 25 not present.)

20 THE COURT: Next.

21 (Juror number 26 present.)

22 THE COURT: Good morning. Come forward to the
23 witness box.

24 Hi. You raised your hand to several questions, one
25 of which was that there was something else that I didn't ask

1 about, that might make it difficult for you to be fair and
2 impartial.

3 THE JUROR: Yeah, I have some trauma in courtrooms
4 because of a court incident where I lost my brother, so I
5 just have a hard time being in courtrooms.

6 THE COURT: What happened? If you can talk about
7 it.

8 THE JUROR: It was a custody battle over my dad and
9 my stepmother and it was the last time I've ever -- I ever
10 got to see him was in the courtroom.

11 THE COURT: So one of -- your dad lost custody of
12 your brother?

13 THE JUROR: Yeah.

14 THE COURT: To your stepmother?

15 THE JUROR: Yeah.

16 THE COURT: How old -- how many years ago was that?

17 THE JUROR: It was five years ago.

18 THE COURT: I see. How old is your brother now or
19 was he then?

20 THE JUROR: He's turning 14 on April 3rd.

21 THE COURT: I see.

22 THE JUROR: I haven't seen him since he was 8 or 9.

23 THE COURT: I see. That must be very hard.

24 THE JUROR: Uh-huh.

25 THE COURT: You understand that didn't happen in

1 this courthouse?

2 THE JUROR: I know.

3 THE COURT: And different kind of case here.

4 Do you think you'd be able to listen to the
5 evidence and focus, like bring your full focus and attention
6 when you're in the courtroom to the case, and when you're
7 deliberating to the case?

8 THE JUROR: I also -- I do have an auditory
9 processing disorder, so I have a really hard time listening
10 and understanding things, if things aren't written down on
11 paper for me. So I don't know if that will affect things.

12 THE COURT: So a lot of the -- during the two weeks
13 of trial, while there will be a lot of -- a fair number of
14 documents, right? There will be a lot of testimony that will
15 be very important, people sitting right where you're sitting
16 in the witness chair, testifying, answering questions and
17 speaking. And you won't have what they say in writing. And
18 that's not the only evidence in the case. That's one big
19 piece of the evidence and one important part. Do you feel
20 like you could listen and take in that evidence and evaluate
21 it?

22 THE JUROR: No, not really.

23 THE COURT: Okay.

24 Any questions for either of you?

25 MR. HANNON: No, Your Honor.

1 MS. MANDEL: No, Your Honor.

2 THE COURT: Okay. I'll excuse you from service in
3 this jury.

4 THE JUROR: Okay. Thank you.

5 (Juror number 26 not present.)

6 (Juror number 27 present.)

7 THE COURT: Right up here in the witness box, sir.
8 Right here. Have a seat right there and just pull the
9 microphone close to you.

10 So you answered yes to, first, the question about
11 knowing some of the companies?

12 THE JUROR: Quest Diagnostics has done my blood
13 work.

14 THE COURT: All right. But you don't do business
15 with them?

16 THE JUROR: I don't do business with them.

17 THE COURT: Okay. Fine. That's no problem at all.
18 The case won't affect anything about that.

19 You also said, I think, yes to the question that
20 there might be a reason you couldn't be fair?

21 THE JUROR: I have two members of my family that
22 have been clinically diagnosed with anxiety and depression.
23 I feel that I can be fair, though.

24 THE COURT: So you've had this experience with
25 these two family members.

1 THE JUROR: Excuse me.

2 THE COURT: You have these two family members who
3 have been so diagnosed, right? Are they in your immediate
4 family? Are they cousins?

5 THE JUROR: One is a niece and one is a
6 sister-in-law.

7 THE COURT: All right. And have you had a lot of
8 discussion with them about their anxiety or depression?

9 THE JUROR: My niece.

10 THE COURT: All right. And is there anything about
11 that -- you think you could be, first of all, fair -- just
12 sort of sit fairly and impartially in this case?

13 THE JUROR: I do.

14 THE COURT: And do you feel like you could be fair
15 and listen to the evidence, and if Dr. Menninger proved her
16 case --

17 THE JUROR: I do.

18 THE COURT: And do you feel like you could listen
19 to it, and if she didn't prove her case, you'd vote for the
20 defendant?

21 THE JUROR: Excuse me, Your Honor?

22 THE COURT: If you listened to all of the evidence,
23 and you evaluated it fairly, and she hadn't proved her case?

24 THE JUROR: Yes, I feel I can.

25 THE COURT: All right. And you feel like you can

1 listen to the evidence from the defendant and evaluate that
2 fairly and impartially?

3 THE JUROR: Yes.

4 THE COURT: All right. In other words, you could
5 treat the two of them, and call it the way you see it, sort
6 of fairly, without putting a thumb either way?

7 THE JUROR: Exactly.

8 THE COURT: Okay. Do either of you have follow-up
9 questions?

10 MR. HANNON: Nothing here.

11 MS. MANDEL: Your Honor, I do.

12 In your conversations with your niece about her
13 anxiety disorder or depression, have you --

14 THE JUROR: I can't hear you. I'm sorry.

15 MS. MANDEL: Is this better?

16 THE JUROR: Okay. Go ahead.

17 MS. MANDEL: In your conversations with your niece
18 about her anxiety or depression, have you spoken with her
19 about whether she has asked for an accommodation from school
20 or from work for those conditions?

21 THE JUROR: No.

22 MS. MANDEL: Thank you.

23 THE COURT: All right. Thank you very much.

24 THE JUROR: Thank you.

25 (Juror number 27 not present.)

1 (Juror number 28 present.)

2 THE COURT: Right up here in the witness box. Good
3 morning.

4 THE JUROR: Good morning.

5 THE COURT: So you answered yes I think to the
6 scheduling question.

7 THE JUROR: I did. I have an 87-year-old mother
8 who is determined to maintain her independence and she relies
9 on me to facilitate that.

10 THE COURT: Does she live near or with you?

11 THE JUROR: Excuse me?

12 THE COURT: Does she live with or near you?

13 THE JUROR: I live in Haverhill. She lives up in
14 Laconia, New Hampshire.

15 THE COURT: And so what would it mean for you, if
16 you're on this jury, in terms of what it does in terms of
17 your ability to support her?

18 THE JUROR: She just relies on me for everything.
19 She has vision and hearing problems. She can't drive and she
20 relies on me to get to her appointments.

21 THE COURT: What do you do when you're at work?

22 THE JUROR: I have her Friday, Saturday, Sunday,
23 and Monday. And I try to get her through three more days
24 until I can get back there on Friday.

25 THE COURT: I see. So every Friday and Monday,

1 you're up in New Hampshire?

2 THE JUROR: I am.

3 THE COURT: All right. I will excuse you from this
4 jury.

5 THE JUROR: Thank you.

6 THE COURT: You're welcome.

7 THE JUROR: Is that it?

8 THE COURT: That's it.

9 (Juror number 28 not present.)

10 (Juror number 29 present.)

11 THE COURT: Right up here in the witness box, sir.
12 Hi.

13 THE JUROR: Hi. Thank you, Your Honor.

14 THE COURT: No problem. So you raised your hand to
15 having heard or read something about this case?

16 THE JUROR: Yes. I was curious to see what courts
17 and cases were available, so I looked at the calendar, and I
18 did put the case number into a web search, and I would -- I
19 think I probably read the first page of the plaintiff --

20 THE COURT: The complaint.

21 THE JUROR: -- but not more than that.

22 THE COURT: Okay. And do you feel like you can put
23 that out -- if you're on the jury, just decide the case based
24 on what you hear in the courtroom, and not whatever you read
25 on that page.

1 THE JUROR: I did. However, I've been thinking,
2 because we had time to think, and a couple questions I almost
3 raised my hand.

4 THE COURT: You can tell me about those things.

5 THE JUROR: Yeah. So regarding your first
6 question, yes, I don't think -- I mean, you provided more
7 information than what I read. I just wanted to know if it
8 was a criminal case or what was happening in court.

9 THE COURT: And you understand, if you're on the
10 jury, no independent research.

11 THE JUROR: I understand, yes.

12 THE COURT: You could do that?

13 THE JUROR: Yes.

14 THE COURT: Okay. You said that there were some
15 other things that -- well, you were thinking about, maybe you
16 should have raised your hand. What are those things?

17 THE JUROR: Well, for example, there was a question
18 about employment with Bristol Myers Squibb.

19 THE COURT: Oh, Bristol Myers Squibb. Yeah.

20 THE JUROR: I haven't, but my wife worked for seven
21 years with them, and she still is looking for opportunities
22 to get back in, go for interviews and things like that. She
23 recently did that. I haven't -- with regards to the question
24 about accommodation, I haven't asked for accommodation, but
25 my son has a disability at school, and he has accommodations,

1 and our oldest daughter is going through the process to help
2 them, more time for answering questions and, you know --

3 THE COURT: What kind of disabilities do your
4 children have?

5 THE JUROR: Well, my younger one is more behavior
6 driven to ADHD with different modalities, and my older
7 daughter, probably the same. I did have my -- unfortunately,
8 our middle son passed away due to a significant disabilities,
9 a medical condition many years ago, like ten years ago. So
10 although I haven't requested accommodations, I'm familiar
11 with accommodations for close family members, and I felt that
12 although it didn't mean that I could raise my hand because it
13 wasn't me, I thought like I wanted to share it.

14 THE COURT: Do you feel like you could be fair and
15 impartial to both sides in this case?

16 THE JUROR: I think I can. I mean, my job is
17 performing audits and leading a group of quality auditors.
18 So I'm being asked to do that every day in my job, right, I
19 need to be fair. But I just wanted to share that with the
20 Court, so --

21 THE COURT: All right. And you also answered yes
22 to the question about having a physical disability or taking
23 medication that might make it hard?

24 THE JUROR: No, it was probably 26 -- I do suffer
25 for general anxiety because of damaging my ear, tinnitus, but

1 it doesn't affect my job --

2 THE COURT: Doesn't affect your hearing?

3 THE JUROR: No.

4 THE COURT: And here, Dr. Menninger told her
5 company that one of her disabilities was anxiety disorder,
6 social anxiety disorder. Is there anything about your own
7 experience that might make it difficult for you to be fair
8 and impartial in this case?

9 THE JUROR: No, again, it's cause by ringing in my
10 ear, and obviously that, while I get used to that, it caused
11 a lot of anxiety. You know, and it's common, tinnitus, for
12 other people or people that listen to a lot of music. I
13 mean, I feel like I can do the job, if you ask me to. I just
14 wanted to just mention those elements.

15 THE COURT: Thank you.

16 Questions for either of you?

17 MR. HANNON: Just briefly. So you mentioned your
18 wife, you say she's involved with GSK?

19 THE JUROR: No, Bristol Myers Squibb. It was one
20 of the companies that was mentioned, I think, right?

21 THE COURT: Yes.

22 THE JUROR: She used to work for them.

23 MR. HANNON: Okay. When did she stop working for
24 them?

25 THE JUROR: She worked in Puerto Rico plant back

1 in -- I forget, probably around 1999 to 2006 or '07 or '08,
2 just by the time our sick son was born and --

3 MR. HANNON: And -- I'm sorry. I cut you off. And
4 she was a quality manager in that plant?

5 THE JUROR: She supervised the manufacturing
6 packaging line. She became like the engineer technical
7 service for the manufacturing process at some point. And
8 right now, she's a quality manager, but not at Bristol Myers
9 Squibb.

10 MR. HANNON: Okay. Understood. All right. Thank
11 you.

12 THE COURT: Ms. Mandel, anything?

13 MS. MANDEL: Nothing, Your Honor.

14 THE COURT: All right. Thank you very much.

15 (Juror number 29 not present.)

16 (Juror number 30 present.)

17 THE COURT: Good morning. Right up there on the
18 witness box. And just have a seat and pull the microphone
19 close to you.

20 So I think you answered yes to the question about
21 having worked as a supervisor where you received or
22 considered a request for an accommodation?

23 THE JUROR: I am a supervisor. So in my job, and
24 I've been doing this for about 15 years, there have been a
25 couple of occasions where I have been asked and made

1 accommodations for people, and it ranged from anything from
2 we built out a wellness room for nursing mothers, to people
3 who had kids that had different schedules, especially when
4 COVID came up. So I've been -- yeah, I've made
5 accommodations in the past.

6 THE COURT: All right. Anything about that
7 experience that might make it difficult for you to fairly and
8 impartially evaluate this case?

9 THE JUROR: I don't think so. No. I can see it
10 from both sides, and as a manager, as long as the work is
11 getting done, then I've had no issues with making those
12 accommodations.

13 THE COURT: Okay. Do either of you want to ask
14 follow-up questions?

15 MR. HANNON: Just briefly. So in your past
16 experiences, was there ever an occasion where someone
17 complained about the way that you had handled a request for
18 accommodation?

19 THE JUROR: No, not that I recall.

20 MR. HANNON: That's all. Thank you.

21 THE COURT: Any question for you?

22 MS. MANDEL: No, Your Honor.

23 THE COURT: All right. Thank you.

24 (Juror number 30 not present.)

25 (Juror number 31 present.)

1 THE COURT: Good morning.

2 THE JUROR: Good morning.

3 THE COURT: So you answered yes both to the
4 schedule question and that there might be a reason that it
5 would be hard for you to serve fairly and impartially?

6 THE JUROR: Yes.

7 THE COURT: Tell me about both of those.

8 THE JUROR: So in the line of my work, I do work
9 with PPD.

10 THE COURT: What do you do with PPD?

11 THE JUROR: Yeah, I mean, I work for a biotech
12 company, and we use them.

13 THE COURT: To do laboratory testing?

14 THE JUROR: Yes.

15 THE COURT: Okay. Have you ever worked with
16 Dr. Menninger?

17 THE JUROR: No. Not directly.

18 THE COURT: And have you heard of her name before?

19 THE JUROR: No, I haven't.

20 THE COURT: How about the Global labs in Kentucky,
21 their lab in Kentucky.

22 THE JUROR: No, I work with the labs in Virginia
23 based.

24 THE COURT: So that's what caused you -- you're
25 just worried about that, or you wanted to raise it.

1 THE JUROR: Yes.

2 THE COURT: Do you feel like you could be fair
3 or -- how much business do you do or how much work do you do
4 with PPD?

5 THE JUROR: A lot. We work on clinical trials, so
6 we use them. They're one of our big lab vendors.

7 THE COURT: So would you say that you're
8 interacting with someone from PPD every week?

9 THE JUROR: Yes.

10 THE COURT: Okay. All right. Any follow-up
11 questions for either of you?

12 MR. HANNON: Do you know who the head of the --
13 well, actually, I'm going to ask a different question. Do
14 you know if you work with PPD's Global Central Labs?

15 THE JUROR: I believe so, yes.

16 THE COURT: And do you know who leads that?

17 THE JUROR: I don't. I just have a contact of a
18 project manager that I work with directly.

19 MR. HANNON: Okay. And that's all I have. Thank
20 you.

21 THE COURT: Anything you want to ask?

22 MS. MANDEL: Yeah, just briefly.

23 Based on your work with PPD, do you have any
24 opinions about the company one way or another?

25 THE JUROR: Yeah, actually, I do. Just from the

1 quality of the type of work I've seen coming from them, we've
2 had issues with them before. So I do.

3 THE COURT: Okay. Thank you. I'll excuse you.

4 THE JUROR: Thank you.

5 (Juror number 31 not present.)

6 THE COURT: Do either of you want me to make a
7 record about that, or do you both agree?

8 MR. HANNON: I concur, Your Honor.

9 THE COURT: What did you say?

10 MR. HANNON: I concur.

11 THE COURT: And you?

12 MS. MANDEL: As do we.

13 (Juror number 32 present.)

14 THE COURT: Okay.

15 Right up here in the witness box.

16 THE COURT: Good morning.

17 THE JUROR: Good morning. How are you?

18 THE COURT: Good. How are you?

19 THE JUROR: Doing well, thanks.

20 THE COURT: So you answered yes to both the
21 question about you or a family member or a friend being in
22 psychiatrist, psychologist, or social worker, as well as a
23 scheduling issue? So why don't you tell me about those two
24 issues.

25 THE JUROR: Good friend that's a psychiatrist, also

1 some mental health in the family, so very familiar with a few
2 kind of professionals that we've looked with a larger family
3 matter.

4 THE COURT: And the scheduling issue?

5 THE JUROR: Scheduling issue, not a set thing. I
6 work in sales, so a good portion of my kind of compensation
7 is tied to the work that I do. So that's a big part of it.
8 And also, a tech company that's going through some fairly
9 significant layoffs, so being a performance-based individual,
10 definitely a little bit of concern around being out of the
11 office for --

12 THE COURT: Is most of the work, the sales that you
13 do in person, by Zoom, by phone?

14 THE JUROR: Zoom and in person. It's mixed mostly.
15 I would say mostly Zoom, but there's a portion that's
16 in-person, as well.

17 THE COURT: Okay. Well, I'll just ask you
18 honestly, like we'll be done -- except for today and next
19 Monday, during the trial, like the rest of this week, next
20 week, you'll be done at 1 o'clock. That gives you the
21 afternoon -- I understand it's not the same as being there
22 all day, but it gives a meaningful amount of time. And I'll
23 just ask you, do you feel like if this were your case, if you
24 were one of the parties, you would want everyone on the jury
25 to be focused, right?

1 THE JUROR: Yeah.

2 THE COURT: So do you feel like the sort of
3 performance-based compensation, the worry about what's going
4 on in the tech world and/or at your company, would be such
5 that you could put that and say, no, I can focus, and I can
6 do this, or would you feel like that's going to be in the
7 back of your mind, and you know, you wouldn't be able to
8 really give it -- if you were them -- if you were a party to
9 this case, you wouldn't necessarily want you on the jury?

10 THE JUROR: There's definitely a little bit of a
11 concern, just for layoffs and stressors going on right now,
12 that's a little bit at the forefront of my mind, but if I was
13 chosen, I would do my best to dedicate my time to it.

14 THE COURT: And does your good friend, the
15 psychiatrist, talk to you about his or her work?

16 THE JUROR: Yeah, not in overly depth. I mean, I'm
17 familiar with a lot of that and what goes on to a day-to-day.

18 THE COURT: And the experience with mental health
19 and family, any of that have to do with social anxiety
20 disorder or panic disorder?

21 THE JUROR: Social anxiety disorder, panic
22 disorder, yeah.

23 THE COURT: Was that someone close to you?

24 THE JUROR: Myself, actually.

25 THE COURT: Okay. And you suffer from that?

1 THE JUROR: Yeah, from -- in my past, yeah, not
2 currently, but in the past, yeah.

3 THE COURT: And do you feel like you could judge
4 this case fairly and impartially?

5 THE JUROR: I would say so. I think it's something
6 that's personal to me, but I still would honor to not -- be
7 nonbiased in the situation.

8 THE COURT: What was the last point?

9 THE JUROR: I would choose to be nonbiased.

10 THE COURT: That you could listen to
11 Dr. Menninger's evidence and PPD's evidence, and if you felt
12 like she hadn't proved that she had a disability, or she
13 hadn't proved some other element of her claim, then you could
14 rule against her, no problem?

15 THE JUROR: Yeah. Correct. Yeah.

16 THE COURT: And if you felt like she had proved her
17 claim, one or more of her claims, you could rule in her
18 favor, no problem.

19 THE JUROR: Correct, yeah.

20 THE COURT: And you feel like you could -- if you
21 were PPD, you would feel like you could give PPD a fair
22 shake?

23 THE JUROR: Yes.

24 THE COURT: And same for Dr. Menninger?

25 THE JUROR: Correct, yeah.

1 THE COURT: Okay. Either of you have follow-up
2 questions?

3 MR. HANNON: Nothing here.

4 MS. MANDEL: In connection with the social anxiety
5 disorder that you mentioned that you've had in the past, have
6 you ever asked for an accommodation at school or work in
7 connection with that?

8 THE JUROR: I have, yes. Not at work, but at
9 school.

10 MS. MANDEL: How long ago did that take place?

11 THE JUROR: Eight years ago, probably.

12 MS. MANDEL: And did the school grant your request
13 for an accommodation?

14 THE JUROR: No, they did not.

15 MS. MANDEL: Do you have an opinion now about the
16 school's decision not to grant that accommodation request?

17 THE JUROR: I do, yeah.

18 MS. MANDEL: What is that opinion?

19 THE JUROR: I think it was unfairly with the school
20 at the time. Yeah, there was definitely some hard feelings
21 at that point. So, yeah.

22 MS. MANDEL: Thank you.

23 THE COURT: What did you request?

24 THE JUROR: I requested six months, a semester, off
25 of school for anxiety situation.

1 THE COURT: Just asked to take time off of school.

2 THE JUROR: Correct. Yeah.

3 THE COURT: And then be able to return to school
4 right where you were.

5 THE JUROR: Yeah. And a pardon for exams, as well.

6 THE COURT: And -- I'm sorry, what was the other
7 part?

8 THE JUROR: A pardon for, like, final exams or like
9 what we have, end of midterms kind of deal, like that.

10 THE COURT: Oh. So it was like partway through the
11 semester.

12 THE JUROR: Yeah, it was partway through the
13 semester.

14 THE COURT: So ask them to be able to return in the
15 middle of the semester when you come back?

16 THE JUROR: Yeah. Correct.

17 THE COURT: And they said, "No. If you leave, you,
18 you leave and you come back" --

19 THE JUROR: Come back on your own accord, but the
20 exams, we're not going to give you extra time or things like
21 that. So it wasn't granted at the time.

22 THE COURT: I see. Okay. And did you go back
23 there?

24 THE JUROR: I did go back there, yeah. Yeah, yeah.

25 THE COURT: And do you feel like you could listen

1 here to this evidence about Dr. Menninger's and PPD's
2 response and independently and fairly evaluate it?

3 MS. MANDEL: I do, yeah.

4 THE COURT: Any other follow-up for either of you?

5 MR. HANNON: No, Your Honor.

6 MS. MANDEL: No, Your Honor.

7 THE COURT: All right. Why don't you step outside.
8 Thank you.

9 THE JUROR: Okay. Thank you.

10 (Juror number 32 not present.)

11 MS. MANDEL: Your Honor, I have two concerns about
12 juror number 32. One is that, according to his own
13 statements, he would be distracted because of his work
14 issues; and the other is that he said that he feels that it's
15 unfair that his school denied him a request for an
16 accommodation for a disability that's identical to the one at
17 issue in this case.

18 MR. HANNON: May I respond?

19 THE COURT: Yes.

20 MR. HANNON: Last one first: not identical at all.
21 Very, very different in terms of the accommodations and the
22 factual circumstances here. He gave no indication that he
23 thought that that was going to, in any way, cause him any
24 kind of bias.

25 He didn't raise his hand to that question. We only

1 stumbled upon that when we found out that he had suffered
2 from some of these mental health conditions. So I don't
3 think that there's any merit to that.

4 In terms of the distracted, we all have lives
5 outside of the courtroom. Everyone suffers from distractions
6 or other obligations.

7 THE COURT: You do?

8 MR. HANNON: I do.

9 And not to downplay the seriousness of his
10 concerns, I respectfully suggest it's not a basis for
11 excluding from the jury.

12 THE COURT: I'm going to overrule it for these two
13 reasons. One, I thought on balance, his statement about the
14 concern about layoffs and the like was -- it's there. It's
15 not zero, but he persuaded me that he would sufficiently be
16 able to focus, and he could put it aside. And everybody does
17 have lives or other considerations outside or didn't seem so
18 strong that he couldn't serve. And with respect to the
19 other, I think it's sufficiently different, and he seemed
20 quite comfortable with the idea that he could rule either
21 way, he could listen to the evidence for Dr. Menninger, he
22 could listen to the evidence for PPD. If she doesn't prove
23 her case, he's comfortable ruling against her, and ruling for
24 PPD, so I'm going to overrule that objection.

25 Just pause for a minute. I think that gives us 19

1 jurors, because the next three didn't raise their hand. I
2 think that's enough, because we seat 12. Even if we seat 12,
3 you each have three strikes. That's 18. That gives us one
4 extra.

5 Before we bring them back in, I just have to go
6 back to resolve juror number 9. Your respective positions,
7 just remind me again what your positions are and what you're
8 urging me to do.

9 MS. MANDEL: Your Honor, juror number 9 is the
10 juror who said, when asked if he could -- I don't remember
11 the exact wording, Your Honor, but if he could, I think, find
12 in Dr. Menninger's favor.

13 THE COURT: He's the juror who was fired in France,
14 25 years ago.

15 MS. MANDEL: Yes. And he gave what we heard as
16 unequal answers about being able to find for each party. So
17 he said that he would be able to, in Dr. Menninger's favor,
18 and he said he would have to with regard to PPD's position in
19 the case. And so it came across as unequal answers, implying
20 bias.

21 THE COURT: What do you say, Mr. Hannon?

22 MR. HANNON: I'm fine having him struck.

23 THE COURT: Fine. I'll excuse him for cause.

24 So Sam, juror number 9 is excused for cause. And
25 we'll pause here. We'll bring everyone back in and we'll --

1 MR. HANNON: May we -- sorry to jump in. I'm
2 advised we need a bathroom break on my side.

3 THE COURT: Sure. So why don't we do this. We'll
4 take a couple minutes' bathroom break, and then we'll bring
5 the -- after they come back in, then we'll bring everyone
6 back in.

7 MS. DORE: Is 32, is he now being excused or is he
8 staying?

9 THE COURT: 32 is not being excused, he's cleared.
10 33, 34, and 35 are cleared. I'm stopping there because I
11 think we'll get the jury out of those. But don't send --
12 since there's no other trials, no need to send them all
13 downstairs yet.

14 Okay. So we'll stand in recess. We'll return in
15 five minutes and then we'll come back and then we'll bring
16 them all back in.

17 (Court in recess at 12:04 p.m.
18 and reconvened at 12:13 p.m.)

19 THE COURT: Please be seated.
20 Bring the jurors in. They can come and sit
21 wherever.

22 MS. DORE: Okay.

23 (The venire enters the courtroom.)

24 THE COURT: All right. Please be seated.

25 So ladies and gentlemen, we've now finished the

1 second part I told you about, jury selection questions, and
2 then I talked to people individually. And now we're going to
3 go to the third part, where we pick the jury from among some
4 of you. So if I call your name -- or your number, rather,
5 not your name. I'll be calling your numbers, then come
6 forward and sit in the seats in the jury box, and then we'll
7 do the third part, which should run pretty quickly.

8 So juror number 2, if you would sit in the first
9 seat, in the first row here. And juror number 3, if you
10 would sit in the next seat. And juror number 5, in the
11 seat -- the third seat. And juror number 7, if you'd sit in
12 the fourth seat. Juror number 8, in the fifth seat, and
13 juror number 11, in the sixth seat in the first row.

14 And juror number 12, if you'd come forward and sit
15 in the second row, in the second -- the --

16 Ms. Belmont, will you show her the seat?

17 THE DEPUTY CLERK: Yes.

18 THE COURT: Thank you.

19 Juror number 13, if you would be in the next seat,
20 the second seat in the third row -- the second row, I mean.
21 And juror number 14, the third seat in the back row. And
22 juror number 16, if you'd go to the fourth seat. Juror
23 number 24, if you'd go to the fifth seat. And juror 27, if
24 you would go to the next seat in the second row.

25 All right. And if we just -- some of you we've

1 spoken with already, but some of you we haven't. And so if
2 we just start going down the line, starting with you, juror
3 number 2, just say what you do for work; or if you formerly
4 work, you don't work now, what you formerly did for work; if
5 you live with a spouse, or partner, or significant other,
6 something of that nature, what that person does or did work
7 for work.

8 THE JUROR: I work for three financial advisors at
9 UBS Financial Services. I take care of my mom. She's 88.
10 And I have four daughters and five grandchildren.

11 THE COURT: Wow. Good for you.

12 THE JUROR: I work at Brookline Bank as a branch
13 manager. I live at home with my wife and three-year-old
14 daughter. My wife is in marketing for e-textbooks.

15 THE JUROR: I work for a biotech company. I lead a
16 team doing computational analysis. I don't have a wife.

17 THE JUROR: I'm a physical therapist. I work in a
18 public school system. And I live with my two sons, 17 and
19 12.

20 THE JUROR: I am a nurse practitioner, and I work
21 at the Brigham. I live with my mom, my husband, and my
22 nephew.

23 THE JUROR: I'm a field service engineer for a
24 biotech company. My wife is a nurse.

25 THE JUROR: I work at a biotech company,

1 manufacturing medical devices. I work in a clean room lab.

2 THE JUROR: Medical device company, specifically
3 artificial intelligence, based out of South Korea. I live at
4 home with my wife and four children. She works for a
5 recruiting company.

6 THE JUROR: Retired schoolteacher. Husband is a
7 retired electrical manufacturer.

8 THE JUROR: I work for a scientific equipment
9 company. My wife is a software engineer. I have two
10 children -- we have two children.

11 THE JUROR: I am currently a photographer and
12 formerly was an attorney, but had a large gap of time. It's
13 been many years since I practiced. My husband works for Bank
14 of America, and we have three children who don't live with
15 us.

16 THE JUROR: I am a jeweler. My wife works for the
17 Archdioceses of Boston as an administrative secretary.

18 THE COURT: Thank you. All right.

19 Counsel, I'll give you a moment.

20 (The following discussion held at the bench.)

21 THE COURT: All right. You go first, Mr. Hannon.

22 MR. HANNON: Number 3.

23 THE COURT: All right. Juror number 3 is struck by
24 the plaintiff.

25 What about you?

1 MS. MANDEL: 14.

2 THE COURT: Juror number 14 is struck by the
3 defendant.

4 Anyone else you want to strike?

5 MR. HANNON: Number 5.

6 MS. MANDEL: We'll strike number 8.

7 THE COURT: Number 8.

8 Anyone else you want to strike?

9 MR. HANNON: Number 13.

10 THE COURT: Number 13. That's your third and last
11 strike.

12 MR. HANNON: I know.

13 THE COURT: Anyone else you want to strike?

14 MS. MANDEL: No.

15 THE COURT: So one thing. So I realized that I
16 made a mistake when I was calling during my typical practice.
17 I skipped juror number 10. That was inadvertent. Okay.
18 They were cleared. And I usually go in order. I didn't.

19 Since you were both, I assume, thinking that the
20 next juror I called would be -- after 27, I'm inclined to
21 keep going and not call number 10 right now.

22 Is that fine with both of you?

23 MR. HANNON: That's fine.

24 THE COURT: In order, I assume you were
25 thinking ahead --

1 MR. HANNON: I was.

2 THE COURT: If we come around, if we get to the end
3 of the cleared people, and I want one more to get 12, then I
4 will go to juror number 10.

5 MS. MANDEL: Okay.

6 THE COURT: All right. So 3, 5, and 13 for you.
7 And 14 and 8 for you, leaving one more strike.
8 Okay.

9 (Bench conference concluded.)

10 THE COURT: Okay. If I call your number, come
11 forward, see Ms. Belmont, she'll give you your card, and
12 you'll go downstairs.

13 Juror number 3, juror number 5, juror number 8,
14 juror number 13, and juror number 14.

15 Okay. Juror number 29, if you would take the
16 second seat in the first row.

17 Juror number 30, if you would take the third seat
18 in the first row.

19 Juror number 32, if you would take the fifth seat
20 in the first row.

21 Juror number 33, if you would take the empty seat
22 in the second row, closest to me.

23 Juror number 34, if you would take the next empty
24 seat.

25 And that's it.

1 Those of you who are new to the jury box, if you
2 would just say -- answer the same question that I posed to
3 the other jurors before.

4 Starting with you. Yes, sir.

5 THE JUROR: My name is is Yrimia Herrera. I'm a
6 senior quality audit, care, and compliance manager for
7 Bristol Myers Squibb. As I mentioned before, auditing and
8 compliance is the world that I spend my time in.

9 My wife is a quality manager for a medical device
10 company here in Massachusetts, as well. She's right now
11 mostly in handling.

12 I supervise employees.

13 We had three kids, one of them deceased. The other
14 two are 14 and 9, just recently.

15 THE JUROR: I work in the commercial real estate
16 field. I manage a region for First American Title Insurance
17 Company. My husband is a fourth grade teacher in Boston. We
18 live with our 18-year-old, soon-to-be-college-going daughter.

19 THE JUROR: Chandler Rodriguez. I work in software
20 sales for Salesforce. And I live by myself.

21 THE COURT: You're next, yes, sir.

22 THE JUROR: I'm a commercial truck driver. I
23 deliver propane for the largest propane company in Canada.

24 My wife is an AP manager for the City of
25 Gloucester, and we live with two children.

1 THE COURT: Thank you.

2 THE JUROR: Hello. My name is Tracey. I'm a
3 career counselor at Bridgewater State University. My husband
4 is a police officer with Bridgewater Police Department. We
5 have two kids, one 13 and one 17 -- one 16.

6 THE COURT: Thank you.

7 All right. I'll give you a moment, Counsel.

8 (The following discussion held at the bench.)

9 THE COURT: Anybody you want to strike?

10 MS. MANDEL: 29.

11 THE COURT: Okay. So that's the last strike. And
12 so the person who replaces 29 will be number 35, because
13 that's where we stopped at clearing people. Okay? All
14 right.

15 So I'll have that person answer the question, and
16 then we'll be done.

17 (Bench conference concluded.)

18 THE COURT: All right. Juror number 29, if you'd
19 come forward and see Ms. Belmont.

20 And juror number 35, if you'd come forward and take
21 that empty seat, the one in the first row right here. Yes.
22 Thank you.

23 And if you'd just answer the question everybody
24 else answered.

25 THE JUROR: My name is Edward Crowley. I'm a

1 enterprise software salesmen. My wife is a head coach for
2 Boston College women's hockey team. And we have one daughter
3 who's nine years old.

4 THE COURT: Okay. All right. Anything else,
5 counsel.

6 MR. HANNON: Nothing here, Your Honor.

7 MS. MANDEL: Nothing here, Your Honor.

8 THE COURT: All right. So for those of you in the
9 audience, thank you very much. You're not going to be needed
10 for service on this jury. I want to thank you very much for
11 your patience with us this morning, you spending the time and
12 waiting, and it's very helpful. We didn't need to reach all
13 of you, but your willingness to serve is very important, so
14 you're excused. Ms. Dore and Ms. Belmont will give you your
15 cards and you can go downstairs to the jury office.

16 So ladies and gentlemen, let me explain what will
17 happen the rest of the day and I will have some more
18 information. So you are the jury in this case. And so,
19 Ms. Belmont -- what's going to happen now is, in a moment,
20 Ms. Belmont will administer the oath to you as jurors. And
21 then we'll take a break for five minutes, you'll take all of
22 your stuff and you'll go into the -- she'll show you where
23 the jury room is, and you can get set up in there. You'll
24 come back. We'll do --- and then I will have some
25 preliminary instructions for you about jury service and the

1 like, and depending what time it is, and how long that takes,
2 we'll probably then break for lunch for an hour, and I'll
3 talk to you about that. And then you'll come back for two
4 hours, 2:00 to 4:00, but done by 4:00, and we'll have opening
5 statements and some evidence. And then we'll break for the
6 day. And I'll give you a little more -- you pretty much know
7 what the schedule is, but I'll go over it with you again.

8 All right. So Ms. Belmont, if you'd swear the
9 jury.

10 THE DEPUTY CLERK: Jurors, if you could please
11 stand and raise your right hands.

12 (The jury was duly sworn.)

13 THE COURT: All right. Thank you.

14 So all rise for the jury, we'll take a brief break
15 right now, so Ms. Belmont can show you the jury room.

16 (The jury exits the courtroom.)

17 THE COURT: So my thought for the schedule is this:
18 That they'll come back and I'll give them preliminary
19 instructions, and then let's break for lunch. And if it's
20 before 1:00, we'll break early. We'll take an hour for
21 lunch, we'll come back, and then you can go openings. And
22 then we don't have to break up the openings, and then you can
23 do the openings and go right to evidence, and maybe we get a
24 little more than two hours, depending on how long it goes.

25 Does that make sense to both of you?

1 MR. HANNON: Yes, it does.

2 MS. MANDEL: Yes, Your Honor.

3 THE COURT: On the preliminary instructions, one --
4 so I've often had the habit of repeating the summary that I
5 read to the venire as sort of a summary of the case. I'm not
6 really sure the utility of that. I'm happy to do it, I have
7 it. I can skip it, make it slightly shorter. If you want me
8 to say it, I'll say it. If you both agree that I can skip
9 it, I'll skip it.

10 MR. HANNON: I'm happy to defer to you, Your Honor.

11 MS. MANDEL: Likewise.

12 THE COURT: All right. Then I'll see. I may skip
13 it. I'll see how it goes, just to make it shorter. All
14 right.

15 Unless you need a break, I say we just wait here,
16 so we can jump right in, as soon as Ms. Belmont's ready.

17 (Pause.)

18 THE COURT: This is why six-person juries are
19 faster.

20 If you all could pick, how many people would you
21 pick? Six, eight, ten?

22 MR. HANNON: 20. The more the merrier.

23 THE COURT: More the merrier. 20.

24 How about you?

25 Forget 20, since we're never going above 12.

1 MS. MANDEL: I think somewhere between 6 and 12,
2 just for efficiency purposes.

3 THE COURT: Like eight, you would be fine with
4 eight, or ten.

5 In state court, are you mostly getting six person
6 or 12, or somewhere in between? In civil cases.

7 MR. HANNON: I'm told they're still doing six, and
8 I'm told that the primary motivating factor is cost, because
9 they're saving a fortune on lunches.

10 THE COURT: They give lunch every day?

11 MR. HANNON: Or whatever the cost is.

12 THE COURT: Just like the juror fee and --

13 MS. MANDEL: And throughout COVID, things have
14 gotten really complicated, so mostly six, I think, yeah.

15 THE COURT: If this were COVID, I would have
16 done -- during the COVID, well, if we had them, when we had
17 them, sort of in the emergent, I would have done six, or
18 maybe seven in this case, because it's two weeks. But I
19 think there's a value of a little bigger than six, it's just
20 a group dynamics, you get a bigger group, it's a little
21 better decision process. I can't prove that, but --

22 (The jury enters the courtroom.)

23 **PRELIMINARY INSTRUCTIONS BY THE COURT**

24 THE COURT: All right. You can move down one.
25 Exactly right. Basically, you got it, if you sit in that

1 seat in the second row, and you sit in that seat in the first
2 row, everyone follows from that.

3 All right. So just a reminder, I'm going to give
4 you some preliminary instructions now, and then we'll break
5 for lunch for an hour. I'll tell you about that at the end
6 and have some suggestions for you. And then we'll come back
7 and we'll hear testimony until 4 o'clock, and then we'll stop
8 at 4:00, and I'll go over, again, the schedule.

9 So these instructions that I'm about to give you
10 will give you a basic framework for considering the evidence
11 as you hear it during the trial. So the first thing that's
12 going to happen in the trial, after lunch, are the opening
13 statements. The plaintiff will go first because the
14 plaintiff has the burden of proof, and then the defendant
15 will go. And opening statements are not evidence. They're
16 purpose is simply to help you understand what the parties
17 expect the evidence to be.

18 After we're done with opening statements, the
19 plaintiff will start calling witnesses and putting on
20 evidence. And the plaintiff will present its case, and when
21 she's done presenting her case, at some point you'll hear her
22 lawyer say "the plaintiff rests." And that means that
23 they're done presenting their case.

24 And then the defendant will be able to present any
25 witnesses -- or additional evidence or witnesses that they

1 wish to present, and when they're done, they'll say the
2 defendant rests. Typically that's the end of the evidence.
3 And when we're done with that, then we'll have closing
4 arguments. And you'll hear from the two lawyers about
5 closing arguments, and then I'll give you final instructions
6 on the law and a verdict form. The final instructions on the
7 law will be much more detailed than what I'm going to give
8 you now, and they'll explain all of the things that you need
9 to determine in order to figure out if the plaintiff proves
10 her claims or not. And the verdict form will be the
11 questions that you answer. And the questions are typically
12 yes, no, or an amount of money, but they'll pair with the
13 instructions. So that's what's to come. All right.

14 So in terms of your job, it's the duty -- it's your
15 job, and yours alone, to decide from the evidence what the
16 facts are. It is my job to decide what the law is and to
17 explain the law to you.

18 You will hear the evidence, decide what the facts
19 are, and then apply the law I give you to those facts. You
20 must follow the law as I explain it, whether you agree with
21 it or not.

22 You will decide this case on the evidence before
23 you and the law as I give it to you.

24 Sometimes jurors are curious about whether I
25 believe certain witnesses or about how I think the case

1 should be decided. My opinion, if I have one, and I
2 certainly do not have one now, is not relevant at all. It is
3 your role, not mine, to decide those issues. You should not
4 interpret anything I may say or anything I may do during the
5 trial as indicating what I think about a witness or what I
6 think your verdict should be.

7 The plaintiff -- this is a civil case, as I told
8 you. I'm not going to explain the brief summary of the case
9 again, because you heard that this morning. And the lawyers
10 will give you their explanation of the case in -- a little
11 later today when you hear their opening statements.

12 But the plaintiff, Dr. Menninger in this case, has
13 the burden of proving her claims to you by a preponderance of
14 the evidence. This is a less rigorous standard than proof
15 beyond a reasonable doubt, a standard you've probably heard
16 of and which applies in criminal cases. Here, Dr. Menninger
17 has the burden of convincing you, in light of all the
18 evidence, that her claims are more likely true than not.

19 If you find that Dr. Menninger meets this burden,
20 you must return a verdict in her favor. If Dr. Menninger
21 fails to meet this burden, then your verdict must be for the
22 defendant.

23 I expect the evidence in this case will include
24 witness testimony, documents and other things received as
25 exhibits, and any facts which the parties have agreed are

1 true.

2 As to exhibits, things that come into evidence, you
3 will have those in the jury room during your deliberations.
4 What you won't have is a transcript of the testimony.

5 There are legal rules that control what you may
6 consider as evidence. When a lawyer asks a question or
7 offers something as evidence, and the lawyer on the other
8 side thinks it is not permitted by the rule of -- rules of
9 evidence, that lawyer may object. This simply means that the
10 lawyer is asking me to decide whether the rules of evidence
11 allow you to consider the challenged information.

12 It may be necessary for me to discuss the issue
13 with the lawyers privately, either by having a conference
14 over there, what we call the sidebar -- where you saw me with
15 the lawyers a couple times during jury selection -- while
16 you're in the courtroom, or by calling a recess. I will do
17 my best to keep those conferences to a minimum or zero.

18 The purpose of those conferences is usually so that
19 I can make a decision on the rules of evidence. We're not
20 keeping things from you to frustrate you, and we do our best
21 to try to have those discussions before 9:00 a.m., when
22 you're hearing evidence, and today after 4:00, or most other
23 days after 1 o'clock when you're done, so that we -- your
24 time that you give us, you're here listening to evidence,
25 rather than sitting there, watching us talk to each other.

1 So I can't promise you that it will never happen, but we're
2 doing our best to try to minimize that.

3 There are certain things that are not evidence.
4 Statements and arguments by lawyers are not evidence.
5 Questions by lawyers, standing alone, are not evidence. The
6 question and the answer, taken together, are the evidence.

7 Objections are not evidence. If I sustain an
8 objection -- in other words, if I agree with the lawyer
9 objecting -- you must ignore the question or exhibit and must
10 not try to guess what the answer might have been or what the
11 exhibit might have contained.

12 Anything that I strike or tell you to disregard is
13 not evidence and must not be considered.

14 Anything you hear about this case outside of the
15 four walls of this courtroom is not evidence. You must
16 decide this case based only on what you see and you hear in
17 the courtroom.

18 In deciding what the facts are, you may have to
19 decide what testimony you believe and what testimony you do
20 not believe. You may believe all, some, or none of what any
21 witness says. It is entirely up to you.

22 I will give you suggestions at the end of the trial
23 for how to go about assessing witness credibility.

24 To ensure fairness, all of you must obey the
25 following rules during the trial. First, do not make up your

1 mind about what the verdict should be until after you have
2 gone to the jury room to decide the case, and you and your
3 fellow jurors have discussed the evidence. Keep an open mind
4 until then.

5 Second, do not talk among yourselves about this
6 case or about anyone involved with it until the end of the
7 case, when you go to the jury room to decide on your verdict.

8 You should feel free to get to know one another and
9 to talk about other matters, like the weather or your
10 families. Anything but this case.

11 Third, do not talk with anyone else about this case
12 or about anyone who has anything to do with it until the
13 trial has ended. Anyone else includes members of your family
14 and your friends. You may tell them that you are a juror,
15 but do not tell them anything about this case until after you
16 have been discharged by me at the end of the trial.

17 Fourth, do not discuss this case in any way, in any
18 electronic forum, or form. You may not talk about the case
19 in an e-mail, a text message, Twitter, Facebook, any other
20 social media site, or in any other online forum.

21 Fifth, do not let anyone talk to you about the case
22 or about anyone who has anything to do with it. If someone
23 should try to talk to you, please report it to me
24 immediately.

25 Sixth, during the trial, do not speak to any of the

1 parties, the lawyers, or witnesses involved in this case. It
2 is important not only that you do justice in this case, but
3 that you give the appearance of doing justice. And if
4 someone saw you talking to someone involved in this case,
5 even if you were just being polite, it might arouse suspicion
6 or call into question your impartiality, so don't do it. If
7 one of the lawyers or the parties or witnesses does not speak
8 to you when you pass in the hall or ride in the elevator,
9 they are not being rude. They are not permitted to talk to
10 you for the same reason I'm instructing you not to talk to
11 them.

12 Seventh, don't read any news stories or articles
13 about the case or anyone involved with it or any radio or TV
14 reports or anything like that.

15 Eighth, no independent research. That means no
16 googling the people, the parties, the claims, the
17 information, the evidence, nothing. Don't do any other kind
18 of internet research. Don't conduct any independent research
19 of any kind about the parties, the claims, or the law.
20 Everything that you need will be provided for you right here
21 in the courtroom.

22 Finally, during the course of the trial, if you
23 have any kind of a problem, let me know right away, so that I
24 can take care of it. If a lawyer steps between you and the
25 witness, so you can't see the witness, raise your hand, and

1 we'll have the lawyer move.

2 If you cannot hear a witness, raise your hand, and
3 we'll have that witness repeat his or her answer.

4 If you need a glass of water or a short break for
5 any reason, let us know, and we'll take care of that.

6 If you need to communicate to me when we're not in
7 court, just give a note to Ms. Belmont or the court security
8 officer to give to me.

9 The rules are important, so please follow them.

10 You'll be allowed to take notes during the trial.
11 It may come as a shock to you that there was a point in time
12 in our country's history where jurors were not allowed to
13 take notes, but it's pretty conventional now that jurors can
14 take notes. So you have notebooks that you can use to do
15 that. A couple of cautions about notes. You are not
16 required to take notes and you can choose not to do so. If
17 you take notes, don't allow your note-taking to distract you
18 from listening to the witnesses and listening carefully.
19 It's important that you observe and listen to each of the
20 witnesses.

21 Take your notebooks to the jury room at each
22 recess. You cannot take them home or anywhere else outside
23 the courtroom.

24 Ms. Belmont will collect them at the end of each
25 day. No one will look at them. They'll be returned to you

1 the next morning, and when the case is over, we'll destroy
2 your notes without reading them.

3 During the trial, you will be permitted to ask
4 questions of the witnesses, if you wish, that are not posed
5 by the lawyers. If, during the examination of a witness, you
6 have a question that you would like that witness to answer,
7 write that question down on a piece of paper and raise your
8 hand. Ms. Belmont will grab the question, the piece of paper
9 from you. I'll take a look at it. I will review it, to be
10 sure that it's something that the -- that I think the witness
11 might be able to answer within the rules of evidence, and
12 then I'll provide it, either way, to the lawyers. And
13 either -- just so you understand, they might ask the question
14 right away, it may be a topic they're coming to, and they
15 might think that reaching that question would be better in
16 the presentation of evidence a little later, so they might
17 get to it later, if they do that. If it's a question that
18 for some reason I think can't be answered, after I confer
19 with the lawyers, then I'll explain to you why it can't be
20 answered, just so you know.

21 You should not draw any inference from the fact
22 that a question you wrote down was not posed during an
23 examination or -- and draw no inference from which lawyer
24 posed the question. That doesn't make any difference and you
25 shouldn't draw a conclusion one way or the other from that.

1 As I told you before, no transcript from Ms. Lopez,
2 because it takes too long to prepare one. So listen
3 carefully to the witnesses.

4 That's all I have for preliminary instructions from
5 you.

6 So what we're going to do now is we'll take a break
7 for lunch and ask you to return -- it's five of 1:00, so I
8 ask you to return at five of 2:00, so we can start. We'll
9 start at five of 2:00 and we'll go until 4 o'clock. We'll
10 have opening statements and witness testimony.

11 So a couple of suggestions to you in terms of
12 lunch. One, you can do --

13 Did you already talk to them about this?

14 THE DEPUTY CLERK: No.

15 THE COURT: Okay. You can go downstairs, we have a
16 cafeteria in the second floor. You're welcome to go
17 downstairs to the cafeteria. You can eat in the cafeteria,
18 you can bring your lunch -- the jury room is yours. You can
19 bring your lunch up and eat it in the jury room if you wish.
20 You can go out. There are a variety of restaurants and fast
21 food of all sorts in the neighborhood. You can go avail
22 yourself of that. I make no specific recommendations, but
23 there are plenty there. I just ask you to come back to be
24 ready to go at five of 2:00, because we can't do anything
25 unless we have everybody. So one person missing, we all

1 wait.

2 So I think that's it. All right. All rise for the
3 jury.

4 Ms. Belmont reminds me about your phone. So you
5 probably checked your phone when you came in today at the
6 front desk. So I allow jurors to have their phones, not in
7 the courtroom. So you can bring them in --

8 Will they be able to do it now, for the afternoon?

9 THE DEPUTY CLERK: They should be able to.

10 THE COURT: So if you want, you can go downstairs
11 now and collect your phone from where you checked it in, and
12 you can have it with you. And then when you come into the
13 courtroom, just leave it in the jury room. And it will be
14 fine in the jury room. You can't have it in the courtroom.
15 And you'll have it there when you leave.

16 And each day you can do that, you can bring it in.
17 You should be all set with security. If they have any
18 issues, you tell them that I you're in a jury trial before me
19 and that I allowed it. And if they have any questions, they
20 should call me or Ms. Belmont. And then so you should be all
21 set to bring it in each day. And then just leave it in the
22 jury room.

23 And at the end, just so you know -- I'll explain
24 this again later -- but during deliberations, you won't be
25 able to have it in the jury room when you deliberate. And

1 we'll have an envelope for each of you. You'll drop it in
2 the envelope. We'll put all the envelopes in a box, and
3 we'll have a court employee sitting outside of the jury room
4 with the box. You won't have to worry about it; no one will
5 look at it. But they'll be right there.

6 All right. So we'll take the recess. You know,
7 we'll just start at 2 o'clock. That will be fine. See you
8 at 2 o'clock. Thank you.

9 (The jury exits the courtroom.)

10 THE COURT: Anything before we break?

11 MR. HANNON: No, Your Honor.

12 MS. MANDEL: No.

13 THE COURT: All right. See you at 2 o'clock for
14 opening statements. Thank you.

15 (Court in recess at 1:00 p.m.

16 and reconvened at 2:02 p.m.)

17 THE COURT: So if we have all the jurors, just
18 bring them in.

19 THE DEPUTY CLERK: Okay.

20 (Jury present.)

21 THE COURT: All right. Ladies and gentlemen, we're
22 ready to begin. We'll start with the opening statement from
23 the plaintiff's lawyer.

24 Mr. Hannon.

25 MR. HANNON: Thank you, Your Honor.

OPENING STATEMENT BY THE PLAINTIFF

MR. HANNON: Good afternoon.

This is a case about fear. Ever since Lisa Menninger was a little girl, she suffered from fear, a very specific type of fear, which she came to later know in life is called social anxiety disorder.

When she was little, it manifested in ways in terms of how she would react with other kids. When she was in school, it manifested in ways in terms of how she learned. As she got older, it manifested in different ways, and she came to eventually learn that she had social anxiety disorder.

But notwithstanding the fact that she suffered from this fear, she did well. She went to medical school. She became a pathologist. She got high-ranking roles at various organizations, which ultimately brought her to PPD, a laboratory company where she was the -- essentially the sort of medical director for its four Global labs. And you're going to hear that she did that job very well.

But her success wasn't without difficulty. You're going to hear that, in the course of her educational studies, in the course of her professional studies, that on occasion, she would run into activities that happened to implicate her disability, particularly public speaking and social interactions. That's the sort of core of her particular

1 phobia.

2 And you'll hear that she was able to do these
3 things, that she was able to give presentations. She was
4 able to do public speaking. But it was really, really hard;
5 that in the run-up to do it, she would be having all sorts of
6 physical symptoms in terms of stomach issues and all sorts of
7 fright and all these various sort of physical manifestations.

8 And then when she actually did it, she was able to
9 do it, in part, because later in life she went and saw a
10 psychiatrist and she got a prescription. And between the
11 prescription and in between simply sort of simply going
12 through these things, she was able to do these things. In
13 fact, you're going to hear she was able to do these things
14 remarkably well, so much so that people didn't even realize
15 that she had social anxiety disorder or that doing these
16 activities caused these kinds of problems for her.

17 Part of that success, as I mentioned, came at PPD.
18 But in December of 2017, something changed. At the end of
19 December, Dr. Menninger, she was supposed to have an
20 end-of-the-year performance review with her supervisor named
21 Hacene Mekerri. This is sort of a very critical meeting that
22 you're going to hear a lot about over the next two weeks.
23 You might hear it referred to as the 360 meeting.

24 I'm going to use that term because, while
25 Dr. Menninger thought she was going there to get her

1 end-of-the-year performance review, she didn't get that.
2 What happened instead was Mr. Mekerri started with some
3 feedback from a 360 review, meaning where he had solicited
4 feedback from some of her colleagues, some of the people that
5 reported up to her.

6 Now, you're going to hear that that -- that that
7 review was generally positive; that there was some
8 constructive criticism provided to Dr. Menninger, but there
9 was also lots of very positive things said as well. And
10 Dr. Menninger's takeaway from that conversation wasn't that
11 there was anything wrong with her performance; quite the
12 opposite. You're going to hear that during that
13 conversation, during that 360 review in the end of
14 December 2017, Mr. Mekerri said that he was so impressed with
15 Dr. Menninger, he wanted her to do more. And the more that
16 he wanted her to do were exactly the types of activities that
17 she had so much trouble doing because of her social anxiety
18 disorder; that he wanted her to start doing presentations in
19 front of clients; that he wanted her to become more -- more
20 visible, get more involved in the sales and presentations and
21 all of that.

22 Mr. Mekerri did that because he didn't know,
23 because he thought that Dr. Menninger had done, on those few
24 occasions that she had done it, she had done it really well.
25 This was a sign of Dr. Menninger's good performance, not any

1 kind of poor performance.

2 But Dr. Menninger knew at that point -- she knew
3 the difficulties that she had encountered throughout her life
4 doing these activities. She knew how draining it was on her
5 when she had to go through these things, when she had to
6 medicate, when she knew about how taxing it was in the
7 lead-up. So she was confronted with a difficult choice:
8 Does she stay silent and suffer, or does she raise her hand
9 and tell them about her disability?

10 You're going to hear that she chose the latter,
11 and you're going to hear that she did that, despite a great
12 deal of fear; fear that if she did that, that if she told
13 them about her limitations, if she told them how difficult
14 this was for her, that they were going to reject her; that
15 they were going to see her as somehow broken or somehow less
16 than she was; that they were no longer going to see her as
17 the brilliant medical director they used to see her as, and
18 they'd see her as something else.

19 She raised her hand. She said, "I have a
20 disability," and she asked for an accommodation. She asked
21 that if they were going to change her role, that they just
22 take into account the fact that these things are really hard
23 for her; try to limit the social presentations, try to limit
24 these new things they were talking about as much as possible;
25 that if they had to do it, that try to come up with a plan,

1 try to work with her, try to work with her doctors so it
2 wouldn't be so taxing, so it wouldn't be so difficult.

3 And you're going to hear Dr. Menninger did all the
4 right things in making this request. They asked her for a
5 doctor's note. She went out and got a doctor. She hadn't
6 even being seeing a doctor at that time. She was -- she was
7 in control. But she needed a note, so she went and saw a
8 doctor. She got the note. They asked for additional
9 information concerning some suggested accommodations the
10 doctor might provide. She gave them those, too. You're
11 going to hear Dr. Menninger did all the right things.

12 Now, part of this accommodation process involved
13 trying to figure out what these new tasks were; what were
14 these additional things that Mr. Mekerri had sort of alluded
15 to in the December 2017 360 meeting. And you're going to
16 hear that, although in December he had said that they were
17 going to talk about it and come up with something, that
18 didn't quite happen. And so as Dr. Menninger is submitting
19 her doctor's notes and trying to convey to PPD that she has
20 this disability, she still doesn't quite know what these new
21 tasks are. And you're going to hear that that results in
22 Mr. Mekerri providing Dr. Menninger a list of five items, and
23 we're going to refer to those five items as buckets.

24 And throughout the course of this trial, you're
25 going to see these buckets and this email, and there's going

1 to be lots of testimony and discussion about them. I won't
2 get into all of them now, but just, forewarned, we'll be
3 talking about those five buckets.

4 So Dr. Menninger gets the five buckets. You'll
5 hear she takes it to her wonderful doctor. You'll hear her
6 wonderful doctor very thoughtfully proposes some ideas of
7 things that PPD can do that maybe allows Dr. Menninger to
8 contribute to these new things without implicating her
9 disability.

10 And you're going to hear, several days later, that
11 Dr. Menninger got back a response from PPD's HR, and you're
12 going to see that what they said in their initial response
13 was, "Okay. We'll accommodate bucket 1. We'll somewhat
14 accommodate bucket 5. We're not going to accommodate buckets
15 2 through 4, but we're happy to talk."

16 It wasn't the answer that Dr. Menninger was
17 necessarily hoping for, but they offered to talk. And on
18 February 28th of 2018, Dr. Menninger, she went to
19 Highland Heights, which is where the central lab was located,
20 the sort of corporate part of it at least, and she was going
21 to have a meeting. She was going to have a meeting with her
22 boss, Hacene Mekerri, and the primary HR contact, someone
23 named Chad St. John. So a meeting with Mekerri and St. John.
24 And this meeting took place on February 28, 2018. This is
25 going to be another sort of important meeting you're going to

1 hear an awful lot about today.

2 And you're going to hear that Dr. Menninger went
3 into that meeting expecting to talk about her request for
4 accommodation, to talk about how they can work together, how
5 they can find a way to make sure that she's not overburdened,
6 that they can do whatever they can to lessen the stress and
7 the pain and the discomfort that she feels.

8 It was a very different meeting. From the outset,
9 the conversation wasn't about how she could do her job; the
10 conversation was about getting her out of the company. Right
11 away, they approached Dr. Menninger with options. The
12 options were she could take a package, an exit. She could do
13 some short-term consulting. The option they didn't provide
14 was she could keep on doing her job.

15 As the meeting progressed, Dr. Menninger pleaded,
16 she begged them, "I can do this job. I have a disability. I
17 can do this job. I've been doing this job."

18 And you're going to hear time and again her pleas
19 and her cries fell on deaf ears. Over and over again they
20 insisted to her, "No, no, no. Your doctor says you can't do
21 this job. This isn't good for you."

22 And she said over and over again, "I can do it. If
23 we can just talk about those other buckets, if we can just
24 talk about what you actually mean by buckets 2 and 3 and 4,
25 we can figure something out. There's lots of things that

1 fall in those buckets I can still do."

2 The meeting ended with an agreement to meet next
3 day. And the very next morning, Dr. Menninger, she sent
4 Mr. Hacene and Mr. St. John an email. And she repeated
5 exactly what she said in the meeting. She said, "I like my
6 job. I don't want a package. I don't want an exit. I just
7 want to do my job and I can do it. All we need to do is talk
8 about what's in buckets 2, 3, and 4."

9 And they canceled the meeting. And they told
10 Dr. Menninger that they were going to look into it and they'd
11 circle back with her, and for two weeks she waited. And when
12 she came back -- when they came back and they gave her a
13 response, you're going to see they didn't answer what was in
14 buckets 2, 3, and 4. You're going to see this was the start
15 of various communications from PPD which just don't match up
16 with the questions that are being asked. You're going to see
17 these are very suspicious communications that don't seem
18 actually part of a conversation that she's in, that seemed to
19 constantly avoid the question that she's asking, constantly
20 take the words of her doctors, spin them, and suggest that
21 she can't do her job, over and over again.

22 And there was more. After this February 28, 2018,
23 meeting, you're going to hear that all of a sudden, PPD went
24 on a hiring spree. That for all this time, Dr. Menninger, in
25 her role as the medical director of the lab, had been urging,

1 trying to get them to hire additional, qualified people,
2 people with PhDs, people with specialties, people that can
3 help cover all of these different benches within the
4 organization.

5 And she'd had trouble doing that, getting PPD to
6 make that investment. But when she disclosed her disability,
7 all of a sudden, they were willing to invest. And they made
8 these hires without consulting her. They started cutting her
9 out of the decision-making. It started looking like, to
10 Dr. Menninger, like they were trying to replace her, like
11 they were preparing for her to leave.

12 And meanwhile, she saw how they were going to do
13 it. In the weeks that followed, her boss, Hacene Mekerri,
14 his tone completely changed. Prior to disclosing her
15 disability, he thought Dr. Menninger walked on water. You're
16 going to hear Mr. Mekerri's words, you're going to hear his
17 description of Dr. Menninger. You're going to hear he
18 thought she was brilliant, but after she disclosed her
19 disability, his treatment of her changed dramatically.

20 He began to blame her for issues within the lab,
21 issues within labs that happened all the time, issues that at
22 her level, way, way above what actually transpired in the
23 lab. She clearly had no responsibility for in terms of being
24 able to stop. And you're going to hear about the way he
25 provided this criticism, that previously -- he'd been

1 supportive of her, previously he'd been -- he sort of
2 exhibited to her that he trusted her opinion, and all of a
3 sudden, she was accusatory. All of a sudden, he was
4 suggesting to her that her performance wasn't good enough.
5 You're going to hear it was a drastic, drastic change.

6 And with all Dr. Menninger saw happening around her
7 after the February 8th meeting, after being cut out of the
8 decisions, after the change in tone from her supervisor, she
9 had a feeling of what was going on, that they were trying to
10 make things hard on her, that they were trying to make her
11 quit, or they were trying to build a record, a written
12 record, that would justify terminating her.

13 And you're going to hear that she's seeing emails
14 during this time, emails that are copying HR. Emails that
15 follow a familiar pattern to Dr. Menninger because it's the
16 same pattern you're going to hear that HR had counseled her
17 to follow when she had a problem employee in her
18 organization. Dr. Menninger had gone from being brilliant to
19 being a problem employee, and it happened drastically.

20 You're going to hear that these developments had a
21 very, very significant impact on Dr. Menninger's health.
22 Again, I mentioned earlier that, prior to disclosing her
23 disability, Dr. Menninger, she wasn't even treating with a
24 therapist. She -- she had a prescription from a therapist
25 she had seen a while back, but it wasn't -- it wasn't a

1 situation where she needed constant care then.

2 Over the course of the events that I've described,
3 things changed dramatically. She began having lots of panic
4 attacks and you'll hear about lots of other sort of physical
5 symptoms she was suffering as well, that the sort of pressure
6 they were trying to exude on her, it did exactly what they
7 wanted. It made her life extremely difficult.

8 And you're going to hear Dr. Menninger had one last
9 hope. As she saw all around her all what was happening, as
10 she saw what the scheme was, what they were trying to do, she
11 complained to HR. And she said it out loud, "I'm being
12 targeted."

13 And you're going to hear that PPD said, "We take
14 these allegations very seriously, and we're going to have an
15 independent investigation done and make sure this isn't
16 happening in our company."

17 And you're going to hear that that independent
18 investigator was Deborah Ballweg. And you're going to hear
19 that, after a couple of weeks, Ms. Ballweg came back to
20 Dr. Menninger and said, "Nope, nothing there. I looked. No
21 one's trying to push you out. This is just normal routine
22 business stuff. It's all in your head."

23 And you're going to hear that was sort of the
24 last -- the last straw for Dr. Menninger. You're going to --
25 you're going to hear that at that point, she had

1 suffered -- she developed a major depressive disorder, you're
2 going to hear that it was difficult for her to kind of
3 function, and you're going to hear that she started thinking
4 about killing herself.

5 It was so bad that, at the end of May, her doctor
6 told her, "No more. You're not going back to work." And she
7 took a medical leave on June 2, 2018, in order to enroll in a
8 partial hospitalization program, and you're going to hear
9 that she's not been able to return to work ever since.

10 The evidence will also show that Dr. Menninger has
11 tried desperately to get better. You're going to hear that
12 she has sought treatments consistently. She has taken many,
13 many medications, of all different dosages. And you're going
14 to hear why she tries to get better: because she has a
15 14-year-old child who she worries about, who she worries
16 about how her own illness impacts her child.

17 It might be very easy hearing this story to think
18 maybe it's all in her head, right? Maybe -- maybe she
19 imagined it all. Maybe -- maybe she misperceived things.
20 But you're going to see that she saw things exactly right.

21 You're not going to have to take my word for it or
22 Dr. Menninger's word for it. You're going to take PPD's word
23 for it. You're going to see in their own internal
24 communications, ones they never thought were going to see the
25 light of day, that they acknowledged after she disclosed her

1 disability, they didn't want her anymore.

2 You're going to see them talking about how what
3 they wanted to do was they want to gently work her out. They
4 want to get her to take a package. You're going to see them
5 communicating internally, asking questions like, "When is she
6 exiting?" And you're going to see the evidence that this was
7 not a company trying to make this work for Dr. Menninger.
8 This was a company trying to drive her out.

9 Everything she perceived, everything she felt, it
10 really happened. And you're going to hear the architect, or
11 one of the architects of that entire scheme, was Deborah
12 Ballweg, the alleged independent investigator.

13 Now, over the next couple of weeks, you'll hear a
14 lot of evidence from a lot of different witnesses. I don't
15 have time to go over all of it, but I just wanted to make two
16 additional points before I leave you for now in terms of the
17 sort of general conduct of the trial.

18 First is, as you hear a lot of evidence and you
19 hear a lot of argument, I'd suggest that one of the things as
20 jurors you have to do is try to connect the dots. You'll
21 hear evidence of something that happens on one day, and maybe
22 evidence that something happens three weeks later, and so
23 forth, and trying to figure out how do these different events
24 connect.

25 And in a few moments, I'm expecting you're going to

1 hear from PPD's counsel, and that they're going to provide
2 you various additional dots, and they're going to suggest you
3 that they connect to tell a different story.

4 You won't know until the end of the trial how to
5 connect those dots. And you're going to hear a lot of
6 evidence over the two weeks, but I just ask you to keep in
7 mind that when you hear the evidence, one of the fundamental
8 questions is: Does the story make sense? Do those dots
9 actually connect in the way that they're suggesting that they
10 do? And I ask that as you listen to the evidence and listen
11 to the various events that unfolded here, you keep that
12 question in mind.

13 The last thing I want to say is related to the
14 first thing that I said. When I started my opening, I told
15 you this is a case about fear. It's not just about
16 Dr. Menninger's fear. It's also about the fear that people
17 sometimes have with respect to disabilities. It's about the
18 fear that people sometimes have when you see somebody with a
19 physical defect or you see somebody or hear somebody about
20 having some kind of a mental health problem or something like
21 that.

22 Disabilities can be scary. But I submit to you
23 that in your role as fact-finders, that you guys have all
24 agreed that you can put aside that fear yourselves and focus
25 on the evidence and on the law. And if you do that and if

1 you put aside your fear and focus on the evidence and the
2 law, then I'm going to come back to you at the end of the
3 case and I'm going to ask you to find in favor of
4 Dr. Menninger.

5 Thank you.

6 THE COURT: Thank you, Mr. Hannon.

7 Ladies and gentlemen of the jury, I remind you that
8 opening statements are just that. They're statements, but
9 they're not evidence.

10 Ms. Mandel.

11 **OPENING STATEMENT BY THE DEFENDANT**

12 MS. MANDEL: Good afternoon, members of the jury.
13 My name is Rachel Mandel, and my partner Patrick Curran and I
14 represent PPD in this lawsuit.

15 We believe the evidence will tell a very different
16 story from what you've just heard. PPD serves customers,
17 usually pharmaceutical companies, to help them develop new
18 medicines. PPD's work includes running labs around the world
19 to test for customers' clinical trials. In order to do that,
20 PPD operates what are called Global Central Labs, which is a
21 set of labs in four countries around the world.

22 The main PPD central lab location and the only one
23 in the United States is in Highland Heights, Kentucky. That
24 lab runs test on medical samples, like you might give at the
25 doctor's office or with a laboratory company, entrusted to

1 PPD by its customers and then returns the results so that its
2 customers can use that data to help it make medicines.

3 PPD needs to make sure that the lab has certain
4 types of accreditations or stamps of approval that its
5 customers require. In August of 2015, PPD hired the
6 plaintiff in this lawsuit, Dr. Lisa Menninger, to work as its
7 executive director of labs. This is a leadership role that
8 involves overseeing the technical work of the lab and talking
9 to customers about what's happening on a day-to-day basis.

10 PPD was happy to have found Dr. Menninger, who was
11 highly regarded and appeared qualified for the leadership
12 role based on her comparable experience at her most recent
13 job. Dr. Menninger is a medical pathologist, a doctor; and
14 with her credentials, PPD could make sure that it had the
15 right oversight in the Highland Heights lab and others for
16 its necessary accreditation.

17 PPD paid for Dr. Menninger to relocate to the
18 Highland Heights area -- she actually lived just over the
19 border in Ohio -- for this position.

20 Dr. Menninger worked in the PPD laboratory building
21 in Highland Heights on a daily basis. She had an office in
22 the administrative area and spent time in the administrative
23 area with other leaders of the company as well as on the lab
24 floor with the people doing the testing on the samples.

25 In addition to her technical oversight, as an

1 executive working with customers and other leaders, the
2 essential functions of her job, which you will see in her job
3 description from the time she was hired included "excellent
4 communication and interpersonal skills, participation in
5 business development activities, frequent interaction with
6 other people, including PPD employees and outside
7 representatives, participation and presentation at regular
8 meetings, responding to customer issues, responding to
9 audits, presenting budgets to senior management, and
10 excellent marketing and negotiation skills."

11 Dr. Menninger's job description also described
12 frequent travel, both in the United States and
13 internationally, and the requirements included spending
14 70 percent of her time onsite at the lab in Highland Heights
15 with availability by phone and computer the rest of the time.

16 When Dr. Menninger had worked for PPD for about a
17 year and a half in late 2016, she was told by her manager,
18 Hacene Mekerri -- I apologize, she told her manager Hacene
19 Mekerri that her daughter needed to change schools because
20 she was being bullied. Dr. Menninger asked Mr. Mekerri if
21 she could relocate to Massachusetts along with her husband
22 and daughter so that her daughter could attend a private
23 school in Rhode Island.

24 Even though Dr. Menninger's job was in
25 Highland Heights Kentucky, Mr. Mekerri was incredibly

1 supportive of Dr. Menninger and wanted to help her in any way
2 he could, so he said, yes to that fact, yes to that request,
3 despite the fact that she held a leadership position that
4 required regular attendance in Highland Heights.

5 Both other leaders and human resources personnel at
6 PPD questioned whether this was really a good idea. But
7 Mr. Mekerri decided to accommodate Dr. Menninger's request so
8 that she could move to Massachusetts for her daughter's needs
9 and largely work remotely.

10 Mr. Mekerri did say that Dr. Menninger would need
11 to travel back to Highland Heights on a regular basis in
12 addition to her other travel so that she could meet all of
13 her job requirements. PPD even committed to paying for this
14 travel, despite the fact that the move was for personal
15 reasons.

16 Dr. Menninger remained at Highland Heights for
17 several months, and then with Mr. Mekerri's blessing, she and
18 her company and her family relocated to Dighton,
19 Massachusetts, in June 2017. Despite the arrangement between
20 Mr. Mekerri and Dr. Menninger after she moved, Dr. Menninger
21 traveled to Highland Heights during the remainder of 2017
22 only twice. This was not in line with Dr. Menninger's
23 commitment, and it posed a problem under the accreditation
24 rules.

25 In November 2017, after living in Massachusetts for

1 several months, Dr. Menninger reported to Mr. Mekerri that
2 she was feeling overwhelmed by her job duties. Now that she
3 was living far away and was no longer around every day for
4 face-to-face conversations, Dr. Menninger was less involved
5 in customer meetings, business development, and her
6 leadership needs. Many of Dr. Menninger's co-workers
7 expressed concern about her effectiveness and her ability to
8 lead while working remotely.

9 In late 2017, Mr. Mekerri talked to Dr. Menninger
10 about this. As you heard, there was a 360 meeting where
11 Dr. Menninger received some of this feedback, and Mr. Mekerri
12 encouraged Dr. Menninger to become more involved with
13 colleagues and customers, including through social
14 interactions and presentations.

15 Mr. Mekerri explained that these parts of
16 Dr. Menninger's job were always part of her responsibilities,
17 and they were especially important now that the lab was in
18 growth mode. Mr. Mekerri also agreed that he would take the
19 lead on hiring and recruiting to lessen the load on
20 Dr. Menninger and allow her to focus on priority areas.

21 Two-and-a-half years into the job, in January 2018,
22 after Mr. Mekerri had told Dr. Menninger that she would need
23 to be more focused on intrapersonal interactions, both with
24 physical presence in Highland Heights and with customers,
25 Dr. Menninger told Mr. Mekerri for the first time by email

1 that she had mental health challenges that would make it hard
2 for her to do some of the things that Mr. Mekerri had told
3 her were required.

4 Mr. Mekerri was traveling at the time, but he
5 immediately responded and said, "Let's set up a time to
6 talk." When they talked, Mr. Mekerri was actually still
7 traveling, so he said, "Let's talk again soon," but he
8 suggested that he would connect Dr. Menninger with human
9 resources so that she could obtain more support and
10 assistance with -- with what she had just revealed about a
11 disability.

12 Mr. Mekerri connected Dr. Menninger with Chad
13 St. John, a human resources director, who quickly sent
14 Dr. Menninger information about available paperwork that she
15 could fill out for disability accommodations and other
16 services that she could avail herself of.

17 After those initial communications, Dr. Menninger
18 had her first evaluation with a psychiatrist named
19 Dr. Marianna Kessimian. And you'll hear from Dr. Kessimian
20 during this trial. After that one evaluation, Dr. Kessimian
21 diagnosed Dr. Menninger with agoraphobia, social anxiety
22 disorder, and generalized anxiety disorder.

23 A few days later, Dr. Menninger sent a disability
24 accommodation request form to Mr. St. John in human resources
25 saying that her psychiatrist recommended that she avoid or

1 minimize any social interaction or public speaking.

2 Dr. Menninger's psychiatrist, Dr. Kessimian,
3 submitted a form, as well, explaining that Dr. Menninger's
4 condition was chronic and any need for her to increase social
5 interaction or public speaking would increase her anxiety and
6 worsen her symptoms. And it would make it difficult, if not
7 impossible, for her to do her job. Those were
8 Dr. Kessimian's exact words.

9 Dr. Kessimian's note also said that if
10 Dr. Menninger would need to have any social interaction or do
11 any public speaking, it needed to be planned together with
12 her doctor.

13 Mr. St. John reviewed these forms that were
14 submitted, and he was concerned that they were vague with
15 regard to what Dr. Menninger actually could and could not do
16 that was required of her job. He was also concerned because
17 many of the things mentioned in these forms are standard
18 parts of an executive director leader role and were
19 increasing because of the lab's growth. Mr. St. John quickly
20 reached out to Dr. Menninger to ask for additional
21 information, including which specific tasks she could or
22 could not do.

23 Dr. Menninger essentially repeated back what was on
24 the forms and said that she could not provide more detail.

25 Mr. St. John wanted to help Dr. Menninger, and so

1 he asked Mr. Mekerri to provide additional information about
2 what the executive director role entailed. Mr. Mekerri then
3 prepared a detailed list with the five buckets that you heard
4 Mr. Hannon speak about, listing out what the job tasks were,
5 how many people Dr. Menninger might have to be speaking to
6 when performing the job tasks described in those buckets, and
7 how often they may occur.

8 In response to this, Dr. Kessimian, who is
9 Dr. Menninger's psychiatrist, explained that Dr. Menninger
10 had endured these types of work events and presentations in
11 the past, but only with intense discomfort and the use of a
12 sedative medication, which came along with serious side
13 effects, including impaired attention and concentration.

14 She also said that, in the weeks leading up to
15 social interactions and speaking engagements, Dr. Menninger
16 experienced insomnia, panic attacks, gastrointestinal
17 problems, and weight loss.

18 In Dr. Kessimian's words, Dr. Menninger could not
19 tolerate public speaking and socializing and that it was as
20 if her vocal cords and brain became paralyzed, while her
21 blood pressure, heart rate, and breathing all increased. As
22 a result, she recommended that any job requirements that
23 called for speaking publicly or even interacting with other
24 people would require Dr. Menninger to have a surrogate or a
25 reader speak on her behalf.

1 She also said that Dr. Menninger should have a
2 surrogate in place for all customer visits and business
3 development events -- critical parts of her job -- and she
4 recommended that Dr. Menninger adjust her travel to be mostly
5 to the Brussels, Belgium, lab location, instead of the
6 Highland Heights, where her main office was.

7 PPD was surprised by the extreme nature of these
8 requests, especially considering that Dr. Menninger held an
9 executive level position that required regular face-to-face
10 interaction with colleagues and customers.

11 However, Mr. St. John and Mr. Mekerri determined
12 that PPD would work with Dr. Menninger to have someone else
13 present on her behalf at senior leadership meetings, town
14 hall meetings, and they would cut her travel expectation by
15 half.

16 Mr. St. John and Mr. Mekerri then met with
17 Dr. Menninger to talk about this. Mr. St. John explained
18 that the other items requested by Dr. Kessimian were
19 challenging because they meant Dr. Menninger could no longer
20 performance major parts of her job.

21 Because it was not clear how Dr. Menninger could
22 remain an executive director without performing these
23 critical job tasks, Mr. St. John asked Dr. Menninger if she
24 would like to consider moving into a consultant role or
25 looking at an exit package.

1 Dr. Menninger's response confused Mr. St. John and
2 Mr. Mekerri even more. She said she could continue to do her
3 job without any accommodations, which was surprising, given
4 the serious problems her doctor had said would occur if she
5 did perform these tasks, including that she could not even
6 tolerate these activities.

7 Over the next couple of weeks into March 2018,
8 Mr. St. John explained again why PPD could not accommodate
9 some of these requested things, including eliminating social
10 interaction. He suggested again that Dr. Menninger work with
11 her doctor to recommend a different accommodation that would
12 allow her to still perform her job.

13 Unfortunately, Dr. Menninger was still not
14 satisfied and would not accept that PPD could not
15 significantly change her executive level job to eliminate
16 most interpersonal interaction.

17 In the meantime and unrelated to discussions about
18 Dr. Menninger's requested accommodations, some quality issues
19 arose in the lab that Mr. Mekerri and others needed to
20 address. Some of the same concerns that Mr. Mekerri had
21 spoken about with Dr. Menninger in 2017 before Dr. Menninger
22 had told Mr. Mekerri or anyone at the company that she had a
23 disability.

24 These -- there were discussions about how to
25 improve things in the lab and specifically about

1 Dr. Menninger's lab leadership. These discussions were
2 simply about improving the functioning of the lab and
3 customer service, and Dr. Menninger was not disciplined in
4 any way.

5 When Dr. Menninger understood that PPD would not
6 fundamentally change her leadership job to remove all
7 interpersonal interaction, in April 2018 she complained to
8 Mr. St. John that she felt that Mr. Mekerri was treating her
9 differently because she told him she had a disability.

10 Mr. St. John took Dr. Menninger's complaint very
11 seriously and immediately referred it to his boss within
12 human resources, Deborah Ballweg. Ms. Ballweg immediately
13 did a thorough investigation into Dr. Menninger's complaint,
14 beginning first by speaking with Dr. Menninger to understand
15 what her concerns were.

16 Ms. Ballweg spoke with many witnesses as part of
17 her investigation, as you'll hear during this trial, and she
18 ultimately found that Mr. Mekerri had not treated
19 Dr. Menninger unfairly and she reported this back to
20 Dr. Menninger carefully and thoughtfully.

21 Much to PPD's surprise, though, Dr. Menninger
22 almost immediately went out on medical leave starting June 3,
23 2018. PPD fully accommodated that leave and let her know
24 that they remained open to having her back to work, welcoming
25 her to let them know what accommodations they might be able

1 to offer to -- that would allow her to do her executive level
2 role.

3 Dr. Menninger continued to resist returning; and,
4 ultimately, she remained out on medical level for almost
5 eight months, during which time she and her family relocated
6 to New Mexico.

7 After that lengthy leave, Dr. Menninger did not
8 return to work at PPD; rather, she began to receive long-term
9 disability benefits and ultimately government Social Security
10 benefits. Dr. Menninger has not returned to work in any
11 capacity for the last five years. She now lives in Oregon
12 with her husband and daughter near her other family, and she
13 has no plans to apply for new employment.

14 Dr. Menninger is claiming that PPD discriminated
15 and retaliated against her after she disclosed her disability
16 for the first time in January 2018. She's also claiming that
17 Mr. Mekerri became more critical of her and required her to
18 do more interpersonal communication only after he learned of
19 her disability, even though she told her doctor very clearly
20 that he put in place those requirements earlier in 2017.

21 She is even claiming that PPD tried to push her out
22 of her job in spring 2018, but the evidence will show clearly
23 that Mr. Mekerri began working with Dr. Menninger to increase
24 her presence in the lab and focus on customer communication
25 in 2017 and that those were reasonable requirements given

1 that her job really required her to be in Highland Heights,
2 Kentucky, carrying out those tasks.

3 Certainly, neither Mr. Mekerri nor anyone else at
4 PPD wanted Dr. Menninger to leave the company. In fact, PPD
5 hoped that she would return from her medical leave, and they
6 did not put in place a permanent replacement for the
7 executive director role for some time.

8 Dr. Menninger is also claiming that PPD did not do
9 enough with its investigation into her complaints in
10 April 2018, which she claimed was retaliation. The evidence
11 will show, though, that Ms. Ballweg did a complete and
12 unbiased investigation, looking into each concern raised by
13 Dr. Menninger and finding that there was just no indication
14 she had been treated unfairly.

15 Dr. Menninger is also claiming that she is now
16 fully disabled and has been unable to work in any capacity
17 for the last five years, and that, in fact, PPD bears full
18 responsibility for the fact that she did not work during this
19 time. The evidence will show that Dr. Menninger has not
20 actually been unable to work in any capacity during that
21 time, and that even if she was, it was not due to anything
22 that PPD did during that short time window between January
23 and June 2018.

24 She also claims again that she will not work again
25 in any capacity and that she is fully disabled for the rest

1 of her working life and that PPD bears full responsibility
2 for this fact. The evidence will show, though, that
3 Dr. Menninger is able to work, but that, even if she is not,
4 it was not caused by anything that PPD did during that short
5 time period.

6 The evidence will show that PPD, through
7 Mr. St. John, Mr. Mekerri, Ms. Ballweg, and others, only
8 supported Dr. Menninger and did everything they could do to
9 help her remain in her job and succeed. This started when
10 PPD accommodated Dr. Menninger by allowing her to move almost
11 a thousand miles away from her home lab to -- so her daughter
12 could attend a different school, and PPD was similarly
13 accommodating after Dr. Menninger revealed her own
14 disability.

15 When Dr. Menninger and her doctor told PPD that she
16 could not do significant portions of her job, including most
17 communication with company leaders and critical customers,
18 PPD still tried to work with her to understand how they could
19 help her continue in her role as executive director.

20 You will see and hear from Deborah Ballweg, Chad
21 St. John, several other PPD witnesses who will describe this
22 story in detail. You will also hear the testimony of Hacene
23 Mekerri.

24 The evidence will show that PPD never stopped
25 supporting Dr. Menninger and they stood with their arms wide

1 open for her return, even when she was out of work for eight
2 months. Surely this is not evidence of discrimination or
3 retaliation and, therefore, we will ask you, the jury, to
4 return a ruling in PPD's favor. Thank you for your time. We
5 appreciate you being here for this trial.

6 THE COURT: Thank you, Ms. Mandel.

7 I remind you, ladies and gentlemen, opening
8 statements can be helpful, but they are not evidence.

9 Mr. Hannon call your first witness.

10 MR. HANNON: Yes, Your Honor. The plaintiff calls
11 Lisa Menninger to the stand.

12 THE DEPUTY CLERK: Ms. Menninger, Dr. Menninger, if
13 you can please stand and raise your right hand.

14 (Witness duly sworn.)

15 THE DEPUTY CLERK: Can you please state your full
16 name, and spell your last name for the record.

17 THE WITNESS: Lisa Anne Menninger,
18 M-e-n-n-i-n-g-e-r.

19 THE DEPUTY CLERK: Thank you.

20 THE COURT: Have a seat.

21 Go ahead, Mr. Hannon.

22 MR. HANNON: Thank you.
23
24
25

1 **LISA A. MENNINGER**

2 having been duly sworn, testified as follows:

3 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

4 BY MR. HANNON:

5 **Q.** Ms. Menninger, could you start by telling the jury how
6 old you are?

7 **A.** I am 54 years old.

8 **Q.** And where do you currently live?

9 **A.** I live in Portland, Oregon.

10 **Q.** For how long have you lived there?

11 **A.** Approximately two years in Portland and one year in Bend.

12 **Q.** And why did you move there?

13 **A.** I moved there because my mom and my sister and my
14 brother-in-law lived there, and I needed additional support.
15 I was struggling at the time.

16 **Q.** Do you live with anyone?

17 **A.** I live with my husband, Mason; and my child, Maya.

18 **Q.** And how old is Maya?

19 **A.** Maya is 14.

20 **Q.** Are you currently employed?

21 **A.** No.

22 **Q.** When was the last time you worked?

23 **A.** My last employment was with PPD, and that was -- that
24 employment was terminated by PPD in February 2019.

25 **Q.** Can you just briefly describe for the jury what your role

1 was at PPD?

2 **A.** I was the executive director for laboratory operations
3 for our Global Central laboratories, which were located in
4 Singapore, Shanghai, Highland Heights, and Belgium.

5 **Q.** And was there any particular qualification you needed for
6 that role?

7 **A.** You needed to be a medical doctor. You needed to have
8 regulatory certifications. In my case, I was a board
9 certified clinical pathologist. So the different regulatory
10 agencies have different requirements and -- yeah, it's
11 doctoral level, plus additional requirements.

12 **Q.** Okay. We'll get into some of that in a moment. But
13 first, could you just generally describe for the jury your
14 educational background, please.

15 **A.** I graduated from college, from Aurora University, with a
16 BA in biology. Then I went to grad school for a year in
17 New Mexico.

18 And it was about that time that -- actually my mom,
19 she said, "You know, one time you had considered medical
20 school. Why did that change?" And we had a discussion about
21 it, and I decided to move back to live with my mom to finish
22 my requirements to apply to medical school.

23 **Q.** Let me pause you there. When was that?

24 **A.** Oh, gosh. I believe that was around 2007.

25 **Q.** Okay. And did you go to medical school?

1 **A.** I'm sorry. 1997. I'm really bad with dates.

2 **Q.** No worries.

3 **A.** 1997.

4 **Q.** And did you go to medical school?

5 **A.** Yes.

6 **Q.** And where did you go to medical school?

7 **A.** Saba University School of Medicine.

8 **Q.** Okay. And after you completed medical school, did you do
9 any -- any postgraduate medical training?

10 **A.** Yes. Then, after you graduated from medical school, you
11 pick a specialty and apply to residency programs. So I
12 completed my first year of residency at the University of
13 Missouri, Kansas City in anatomic and clinical pathology.
14 Then I decided that I want to just specialize in strictly
15 clinical pathology, so I transferred to a program that had a
16 clinical pathology only option, and that was at Virginia
17 Commonwealth University in Richmond, Virginia.

18 **Q.** And what did you do after that?

19 **A.** I was recruited back to Kansas City and asked to work as
20 a staff pathologist for St. Luke's Health System in
21 Kansas City, where I had previously done some of my pathology
22 electives.

23 **Q.** And did you accept that position?

24 **A.** Yes.

25 **Q.** And just generally, what were your duties and

1 responsibilities there?

2 **A.** I was a staff pathologist for the core hospital.

3 There -- there were four of us, four pathologists, and then
4 we -- we had other hospitals as part of the health system, so
5 we divided those up between us and covered those laboratories
6 as their laboratory medical director. I also served as the
7 laboratory director for the St. Luke's cancer institute,
8 which was located in the main hospital.

9 **Q.** At some point, did you leave St. Luke's?

10 **A.** Yes.

11 **Q.** And when was that?

12 **A.** 2010.

13 **Q.** And where did you go?

14 **A.** I went to Clinical Reference Laboratory.

15 **Q.** Where was that?

16 **A.** That was in Lenexa, Kansas.

17 **Q.** And what was your role there?

18 **A.** I was laboratory director for the general and the
19 clinical trials laboratories.

20 **Q.** At -- at some point, you joined PPD; is that right?

21 **A.** Yes.

22 **Q.** Could you explain for the jury how you came to join PPD?

23 **A.** I had been working at Clinical Reference Laboratory for
24 over five years and was happy. I wasn't really looking for
25 another job, but I reported directly to the CEO, so I knew

1 there was -- there was really nowhere else to go up.

2 I was contacted by a recruiter and wasn't really
3 taking it seriously at the time because that -- a lot of
4 doctors are frequently contacted by recruiters. But I
5 listened to what she described as the role, and the benefit
6 package, the compensation and the opportunities for career
7 advancement were much more significant than what I had at
8 CRL. So I made the decision to apply, and I was interviewed
9 and ultimately hired for that position.

10 **Q.** And when did you join PPD?

11 **A.** I joined PPD in August of 2015, the very end of August.

12 **Q.** And did I hear correctly that one of your
13 responsibilities at PPD concerned oversight of its Global
14 Central Labs?

15 **A.** That's correct.

16 **Q.** Now, were you the only person that had oversight of the
17 Global Central Labs?

18 **A.** I was the only medical doctor who had oversight of the
19 laboratory operations of those four Global laboratories.

20 **Q.** Were there other functional areas that other people had
21 responsibility over?

22 **A.** Yes.

23 **Q.** And could you describe for the jury what those were?

24 **A.** There was the project management department. They were
25 responsible for managing the client's studies while they

1 perform them.

2 At the time, I was hired, there was a group called
3 "technical operations." They were responsible for setting up
4 all the requirements of the study in the computer system so
5 that they knew what supplies had to be sent out to different
6 sites and just -- to make sure -- set up all the logistics
7 that would be required for the study.

8 There was the data management department. They
9 were responsible for all the data being transmitted back to
10 the client. I know I'm blanking.

11 Then we had -- we had individuals in place,
12 globally, who were like site heads for the Belgium lab and
13 the labs in Asia. Asia was unique in that their local
14 regulatory requirements required that they had a local
15 medical doctor serve as the medical director on their
16 certificates.

17 However, those doctors did not work for PPD and
18 they were not involved in the oversight of those
19 laboratories. It was just like -- to fulfill -- to fulfill
20 the local regulatory requirement.

21 The reason for that was that we treated our four
22 laboratories like they were one so -- so that if you sent
23 your specimen to Belgium and then sent that same specimen to
24 our lab in Shanghai, that the results would be comparable.

25 Q. Understood.

1 And I should have asked this earlier, but can you
2 explain for the jury what -- what PPD actually did back at
3 the time you worked for them?

4 **A.** They are -- they were a clinical research organization.
5 They had different sections. The -- part of the company that
6 I worked for was the laboratories, and then the laboratories
7 were also further broken down into types of laboratories. So
8 there were strictly research laboratories, an analytical
9 laboratory, a laboratory that did, like, vaccine research.

10 And the laboratories that I covered were the ones
11 that actually did patient testing. So we -- we did testing
12 on the samples of the participants enrolled in the clinical
13 trials.

14 **Q.** Okay. And I think you mentioned earlier that you needed
15 to be a medical doctor to fulfill your role; is that right?

16 **A.** Yes. The laboratories that I covered were, essentially,
17 equivalent to the type of laboratories you would see in a
18 hospital. So there were some situations where you could be a
19 PhD clinical chemist and cover that particular section of the
20 lab, but you couldn't cover hematology, for example. Or
21 there were some situations where you could be a PhD doctoral
22 level scientist and cover molecular, but you could not cover
23 the other sections in the laboratory.

24 So as a clinical pathologist, I was able to cover
25 the majority of the sections in the laboratory in addition to

1 providing medical significance of the results.

2 **Q.** Understood.

3 And in addition to being a medical doctor, did you
4 also have to have various certifications?

5 **A.** Yes. There were a lot. I -- I was board certified in
6 pathology. I also needed to hold a medical license in the
7 state that I practiced. So I had previously practiced in
8 Kansas and Missouri, so I had state licensures there. I had
9 to obtain a license in Kentucky when I took the job at PPD.

10 Also laboratories need to be certified by CLIA.
11 That's a government standard, or a CLIA deemed laboratory or
12 organization.

13 So most clinical laboratories are accredited by the
14 College of American Pathologist. There are a few states that
15 if -- if you're going to perform testing on samples that come
16 from those states, you also have to hold certification for
17 those states.

18 **Q.** Okay. I'm going to show you a document here on the
19 screen in front of you. And just for the record, this is
20 Exhibit 3. And I'm showing you here the fourth page of
21 Exhibit 3.

22 And do you recognize this?

23 **A.** Yes.

24 **Q.** And what is this?

25 **A.** This is my CV that I submitted before I worked at PPD.

1 MR. HANNON: Ms. Belmont, I believe this is in
2 evidence.

3 BY MR. HANNON:

4 Q. I'm sorry, you said this is --

5 THE COURT: Exhibit 3 is an agreed-to exhibit?

6 MR. HANNON: Yes, correct.

7 THE COURT: All right. So it's admitted, if it
8 isn't already.

9 (Exhibit No. 3 admitted into evidence.)

10 BY MR. HANNON:

11 Q. So you said this was a CV from what --

12 THE COURT: I'm sorry.

13 In the back row, you have your own monitors, if you
14 want, between the seats. You can pop them up out of those
15 armrests. Then you won't have to squint. We can pull them
16 out for you if you need help.

17 (Pause in proceedings.)

18 THE COURT: Go ahead.

19 MR. HANNON: Thank you.

20 BY MR. HANNON:

21 Q. So I'm sorry; from what point in time was this, was this
22 CV?

23 A. This was -- this was the CV that I had updated. I'm
24 trying to see -- oh, once I -- once I was working at Clinical
25 Reference Laboratory.

1 Q. Okay. So this was -- this was just prior to joining PPD?

2 A. Yes.

3 Q. Okay. And if we turn to the second page there at the
4 top, you see the section captioned "Professional License and
5 Certification"?

6 A. Yes.

7 Q. And does that accurately describe the professional
8 licenses and certifications you held at the time?

9 A. Yes.

10 Q. I want to direct your attention to the -- about
11 two-thirds of the way down that list, there's one that says
12 "Clinical Laboratory Improvement Amendments" and then
13 "(CLIA)."

14 Do you see that?

15 A. Yes.

16 Q. Can you explain for the jury what that is?

17 A. That is a requirement by the US government for clinical
18 laboratories. It is regulatory standards that laboratories
19 must follow to ensure that you're providing high quality
20 results in testing and that you have qualified individuals in
21 your laboratory to perform the testing.

22 CLIA will give deemed status to certain
23 professional organizations, such as the College of American
24 Pathologists. But usually, in addition to having College of
25 American Pathologists certification, you still need to have a

1 CLIA certification and meet that requirement.

2 **Q.** And then below that section, there's a section for
3 professional associations. Do you see that?

4 **A.** Yes.

5 **Q.** And does that accurately reflect the association, the
6 professional associations you were involved with at the time?

7 **A.** Yes. Based on those dates.

8 **Q.** Okay. So when you -- when you actually joined PPD, can
9 you explain for the jury what your day-to-day
10 responsibilities were like?

11 **A.** PPD solely focused on clinical trials, so my job heavily
12 consisted of planning, reviewing, and approving validations
13 of new testing that we brought in our laboratory, and that
14 was based on requiring -- or requests from our clients, what
15 kind of testing they wanted.

16 There was a lot of esoteric testing, so we were
17 constantly validating, and I was constantly reviewing
18 technical documents that only I was authorized to approve.

19 **Q.** And when you say "validate," what do you mean by that?

20 **A.** A validation is testing that you perform if you're going
21 to bring a new test into the laboratory. So to give an
22 example, if you wanted to do blood sugar testing, and it
23 wasn't set up in your laboratory yet, you would have to run
24 samples using the kit that you planned to use to show that
25 the tests performed according to specifications that were

1 acceptable before reporting out patient results.

2 **Q.** Besides these validations that you described, what else
3 did you do?

4 **A.** I also frequently would consult with clients and project
5 managers by phone, by email. Any time they had questions
6 about the results, the testing, you know, could -- asking if
7 we could do certain types of testing, asking for medical
8 clarification about particular results, a lot of times they
9 would give me more information related to clinical history
10 that would help me, you know, give them more -- help them
11 with their consultation.

12 I also was responsible for the labs' staff to make
13 sure that we had qualified lab staff based on the CAP and
14 CLIA requirements in our laboratories. There are -- the
15 requirements are that the med techs doing the actual testing
16 at the bench, they also need to go through certain levels of
17 education and certifications to perform that testing.

18 Then I was also responsible for things like quality
19 control. At my level, I reviewed the monthly metrics.
20 Quality control started with -- like, the med tech at the
21 bench was the first line to make sure, okay, the -- the
22 testing -- the reagents are running as they should, the
23 instruments are running as they should, and the person
24 performing the testing is performing it as they should.

25 And then those quality metrics went up the line

1 based on levels, so then the next line would be the
2 supervisor would review and then the associate director or
3 director or manager. And then I was provided with monthly
4 metrics to review our quality control to make sure that there
5 weren't any issues or -- and follow up on any issues. We had
6 a quality control program for each individual lab.

7 In addition, though, since we had four Global
8 laboratories that we treated as, like, one, we sent specimens
9 to the four different laboratories, and we all made sure that
10 we were getting comparable results within -- within the
11 limits of acceptability.

12 I also oversaw quality management functions for the
13 laboratory. So in the beginning of each year, we would set
14 metrics, determine metrics that we wanted to follow, and
15 evaluate those during the year to see if we needed to make
16 any changes to any of our processes in the laboratory. I was
17 responsible for reviewing and improving all standard
18 operating procedures, so we had procedures for every assay.
19 I mean, we had procedures, which we called it SOPs, for
20 everything. So usually those would be initially written and
21 drafted by like a lead technician or a supervisor. Sometimes
22 those got passed around between the Global supervisors,
23 because, like I said, we acted as one lab. we wanted to make
24 sure that we were globally all following the same procedure.

25 And then ultimately, finally, it would come through

1 the system for me to review and approve, and I could reject
2 or I can approve -- sometimes I rejected it because there
3 were certain parts of it that were not acceptable, and I
4 would suggest changes and edits.

5 **Q.** Did you ever directly supervise the technicians in the
6 labs that were doing the work?

7 **A.** No, like I said, the laboratory has different sections
8 and the different sections have a supervisor. So the
9 supervisor was responsible for managing and supervising the
10 actual med techs at the bench. And we even further had the
11 med techs divided into different levels so you had like an
12 entry-level med tech, a mid-level, and a lead med tech, and
13 they had different levels of responsibility based on their
14 experience.

15 **Q.** I'm going to ask you to look at another document here.
16 This is Joint Exhibit 378. Let me see if I can enlarge that
17 a bit.

18 Do you recognize this document?

19 **A.** Yes.

20 **Q.** And what is it?

21 **A.** This was when I was on site in Highland Heights for the
22 State of New York CAP inspection. And the office that I was
23 working in at the -- at the time I was working late, after
24 hours, trying to catch up on a lot of tasks that I had to do
25 before leaving for the day.

1 And so Hacene stopped in the office, and I had my
2 Outlook calendar and tasks lists opened. And he said, "How
3 are you doing?" You know, it was dark, it was late. And I
4 said -- I pointed to the Outlook task list, and I said, "I'm
5 overwhelmed."

6 And -- and he was kind of surprised like, "Well,
7 what do you do? Like, what things are you working on?" And
8 I was not surprised that Hacene was not familiar with what a
9 clinical pathologist does. That was not his background. His
10 background was in data management.

11 So he really didn't understand or know what I did
12 from a technical or medical standpoint, all the day-to-day,
13 like, validations and consults and answering emails and, you
14 know, the things I described previously.

15 **Q.** Let me stop you there for a moment. I don't know if this
16 has been said yet. Can you tell the jury who the person is
17 you just described to us as Hacene?

18 **A.** Hacene was my manager.

19 **Q.** Okay. And the last name is Mekerri?

20 **A.** Yes.

21 **Q.** Okay. So you -- you have that interaction with
22 Mr. Mekerri you just described. And how, if at all, does
23 that relate to the email we're looking at here?

24 **A.** He was curious about what -- what I did as part of my
25 day-to-day job.

1 And he's -- so he -- he asked can I, like, make a
2 little table to show him what I actually did, because,
3 apparently, he didn't know. So I did that, and I sent it to
4 him. And then I never heard anything more. He didn't reply,
5 and we never -- he never came up again.

6 **Q.** So this email is November 28, 2017; is that right?

7 **A.** Yes.

8 **Q.** Okay. And just looking at the first page of the
9 attachment, we can walk through these. So the first item you
10 have listed here is "emails." What -- what kinds of emails
11 are you referring to there?

12 **A.** All different kinds -- emails from my direct reports
13 related to odd questions; emails from project managers with
14 questions from clients; emails about setting up different
15 meetings for the week, meeting invites. You know, just -- it
16 could be about anything and everything.

17 **Q.** Next item, "meetings." What types of meetings were you
18 referring to this there?

19 **A.** I was involved in Global supervisor meetings with my
20 team. Also, we had senior leadership meetings that were
21 every two weeks. If there was a specific request from a
22 client and we wanted to discuss whether it was something we
23 could set up in our lab, we would pull in the appropriate
24 members of different departments and have a meeting about
25 that.

1 So it really depended on -- yeah. There were
2 just -- there were all kinds of meetings. We had quarterly
3 quality management meetings. We had one-on-one meetings with
4 our direct reports. Yeah, just any time there was anything
5 that needed to be discussed related to what was going on in
6 the central lab. Some of them were regular standing
7 meetings. Some of them were specific to, like, a project
8 that we were working on or some other related issue.

9 **Q.** Okay. Turning to the next line. So that reference, in
10 part, the -- the validation plans you referenced earlier?

11 **A.** Yes.

12 **Q.** And besides validation plans, what else -- what else is
13 included in that third line there?

14 **A.** We did stability studies to make sure that the specimens
15 were stored appropriately during transit. Like if they
16 needed to be at a refrigerated or frozen temperature, so we
17 would do those studies in-house that to show that, yes, the
18 studies were still valid at this temperature. I would sign
19 off on all of those.

20 I am kind of blanking right now about the test
21 maps. I suspect those were, like -- yeah: I'm sorry. It
22 was so long ago. I'm not sure exactly what I was referring
23 to there.

24 **Q.** Pass. We'll come back to that.

25 **A.** Okay.

1 Q. "Technical memos"?

2 A. Technical memos were if there was a change to an assay or
3 an instrument, we would write technical memos to update our
4 clients. I would -- used to write those or have one of my
5 direct reports draft and then clean it up and finalize it.

6 Q. Going to the next line, it references "analytical
7 investigations." Can you tell us what that refers to?

8 A. If we had any indication based on our quality control
9 samples that a particular assay or instrument wasn't
10 performing according to our specification, we would do an
11 investigation to resolve what was going on before we would
12 actually resume patient testing.

13 Q. And then the reference to "CAP/Alt PT"? Do you know what
14 that is?

15 A. Yep. That's a requirement that you run in your
16 laboratory proficiency testing as another level to ensure
17 that your instruments and assays are performing according to
18 standards.

19 Most clinical laboratories participate in College
20 of American Pathologists proficiency testing program. So
21 every quarter, they'll send out unknown samples, and you have
22 to run them and then report the results that you get back.
23 And then later they send you a report showing whether or not
24 you passed.

25 Q. Okay. And the next item, "linearity," what's that refer

1 to?

2 **A.** Linearity is basically to show that your -- for certain
3 assays, that it's -- it's linear. Like if you increase the
4 quantity of the substrate, you see that on your -- you get
5 the straight line. So it's kind of like, you know, two,
6 four, six, eight. You want to make sure that you get as
7 straight a line as possible to show that the assay is linear
8 for tests that have that kind of curve.

9 **Q.** The next item, "GLASS," what's that?

10 **A.** That was the quality control program that we created
11 ourselves to make sure that our four Global laboratories
12 performed results that were comparable.

13 **Q.** Moving to the next item, "shipping condition, test cases,
14 and validation docs." What is that?

15 **A.** That was -- they would test the containers that the
16 specimens were shipped in to make sure that they remained at
17 the temperature, the required temperature that they needed to
18 be in so that if the specimen was supposed to be frozen at a
19 certain degree, that those containers did, in fact, keep the
20 specimen frozen at that particular temperature. And I had to
21 review and sign off on those.

22 **Q.** Next item, "SOP review and approval," what's that?

23 **A.** That was what I was referring to earlier, procedures for
24 everything we did in the laboratory. And those would be
25 written usually by, like, a lead tech, a supervisor, and then

1 they would go through a chain, a hierarchy, until they would
2 finally get to me. And I would review and determine whether
3 or not they were acceptable. And if I approved them, then
4 they went on and the staff were trained on them. And if I
5 rejected them, I put in comments and suggested edits and
6 explained why they needed to be changed.

7 **Q.** Next line, "Safety minutes review/lab KPIs." What's
8 that?

9 **A.** It's required that you review safety metrics monthly to
10 make sure that, you know, the eye wash station's working,
11 there's no electrical hazards, things like that.

12 So we had a safety officer and safety team, and
13 they would provide safety minutes for me to review to make
14 sure that there were no safety concerns for the laboratory.

15 And lab KPIs is key performance indicators. Those
16 were that quality metrics that we set up at the beginning of
17 the year and that I received quarterly to review, to look for
18 any concerning trends or shifts indicating, like, a reagent
19 problem or any kind of issue with the testing and in any one
20 of our laboratories.

21 **Q.** Okay. I'm just going to take a break from this document
22 for a little bit. We can come back to some of those other
23 duties in a little bit.

24 But I'm going to ask you this question now: As of
25 November 2017, what if any duties had you been asked to

1 perform relative to business development?

2 **A.** I was asked to -- sometimes they would -- well, they
3 would consult with me if a client wanted a particular assay
4 set up in our laboratory, and we would evaluate if it made
5 sense strategically, if we had enough volume, or did it make
6 more sense to send it out to a reference laboratory?

7 So most of the time, it was, can we get this type
8 of testing? Do we have the right compliance, the right
9 certifications in our lab to perform this type of testing?
10 If not, we would have to send it out to another laboratory
11 that had that certification.

12 **Q.** And was there any group within PPD that specifically had
13 the responsibility for business development?

14 **A.** Yes. It was a large group, and my -- I had a peer who
15 was also an executive director who oversaw that group. So
16 lots of times, you know, we would informally chat about
17 strategy and -- yeah.

18 **Q.** Now, at some point in time, did you -- did you come to
19 learn that business development might become a larger part of
20 your responsibilities at PPD?

21 **A.** Yes, the end of December 2017.

22 **Q.** And from whom did you learn that?

23 **A.** Hacene Mekerri, my manager.

24 **Q.** And what was the context in which that issue came up?

25 **A.** He -- he said that he would like to make some changes to

1 my role in 2018 to make me more visible in front of clients,
2 and he specifically mentioned formal presentations, like
3 formal PowerPoint presentations to pharmaceutical clients.

4 **Q.** And what was your reaction?

5 **A.** I became extremely anxious.

6 **Q.** Why?

7 **A.** Because I have social anxiety and social anxiety
8 disorder, and I knew that giving formal presentations like
9 that would cause severe panic attacks.

10 Also, I knew that I needed to medicate to give
11 those presentations. And, you know, there's -- there's
12 anticipatory panic when you know those things are coming up,
13 so that's stressful; and there's, like, recovery after you go
14 through those presentations.

15 Basically, it allowed me to give what Hacene
16 considered excellent presentations of the few slides I had
17 done, but the medication masked the external symptoms.
18 Inside I was panicking. The medication hid that from the
19 audience.

20 **Q.** Well, we'll get back to that in a moment, but when --
21 when did you first begin to suffer from social anxiety
22 disorder?

23 **A.** I've had it my entire life.

24 **Q.** And while you were growing up, did anyone else in your
25 family exhibit any signs of any kind of medical health issue?

1 **A.** Yes. My dad had mental health issues. I did not know
2 exactly at the time what he was diagnosed with, and then --
3 but on my mom's side, my mom and my grandmother had anxiety.

4 **Q.** And while you were growing up, how -- how did your social
5 anxiety disorder impact you?

6 **A.** Well, as a child, in school, I was terrified to ever be
7 called on by the teacher, terrified to ever raise my hand. I
8 was afraid if I would be asked to read out loud in class.
9 Usually, on the playground, I would just go find a spot and
10 hang out by myself. Yeah. I was teased.

11 It was hard. Back then, in the '70s, you know, I
12 don't even know if social anxiety disorder was an official
13 condition. It was just considered that I was extremely shy.
14 And I had teachers who would refer to my condition on report
15 cards, but I don't think anybody really knew what it was or
16 what to call it.

17 **Q.** And as you grew older and pursued your educational
18 studies, did your social anxiety disorder continue to impact
19 you?

20 **A.** Yes.

21 **Q.** And in what kinds of contexts?

22 **A.** Definitely with public speaking. I always felt awkward
23 in social situations. I did not get panic attacks in social
24 situations. But I felt uncomfortable. And when I got home,
25 I was exhausted. I was relieved to just, like, be by myself

1 with my cat.

2 But, yes, if I had to give a presentation like I
3 did throughout medical school and residency, I needed to
4 take -- I was taking Valium, which was prescribed to me by
5 different doctors at the time, in order to deal with the
6 shaky voice and the panic attacks, essentially.

7 **Q.** And -- and you mentioned a panic attack. Can you
8 describe for the jury what a panic attack feels like to you?

9 **A.** Some are worse than others, but in general, my breathing
10 becomes very rapid. My heart rate becomes very rapid. I
11 start sweating. I get shaky. My voice gets shaky.
12 Sometimes I'm unable to talk if it's really bad, and I
13 just -- I'll have tears come down my face. And it's very
14 scary.

15 I get GI distress, which is embarrassing because
16 then I feel like I have to go to the bathroom; and, you know,
17 I'm, like, embarrassed by that. And the more the symptoms
18 escalate, it just makes me panic more and more. So it's just
19 this awful spiral of, like, the symptoms just keep
20 escalating, and you can't stop it.

21 And it's like feeling trapped, and sometimes you
22 feel like you have like an out-of-body experience, and you
23 are just, like, not even aware of what's going on around you.
24 So that's what it was like without medication, or what --
25 what it is like.

1 **Q.** And talking about your time at PPD, you indicated that
2 there were times at PPD you would engage in activities that
3 you had to medicate for; is that right?

4 **A.** Yes.

5 **Q.** Okay. And did I hear you right, those were -- those were
6 essentially presentations and things of that sort?

7 **A.** Yes. Very rare. We would usually have, like, two town
8 hall meetings a year. They were supposed to be quarterly;
9 but, usually, they only happened a couple of times, so I was
10 asked to present a few slides at two of those.

11 And I was asked to present a few slides at a couple
12 of the senior leadership team meetings. And then on -- on
13 occasion, when our chief operating officer was coming to
14 visit, I was also asked to present a few slides, but didn't
15 actually present that time because we ran out of time, and
16 they needed to get -- start the lab tour.

17 **Q.** Besides those activities you just described, up until
18 December of 2017, were there any other responsibilities that
19 you had at PPD that caused you panic attacks?

20 **A.** No.

21 **Q.** As of December 2017, had you told anyone at PPD about
22 your social anxiety disorder?

23 **A.** No.

24 **Q.** Why not?

25 **A.** There's a stigma with mental illness, and I was afraid

1 that people would view me as defective and that that might
2 hurt my career opportunities, my job. I think that's why
3 most people, or a lot of people, with these disorders do not
4 communicate it.

5 **Q.** And you mentioned fear of losing your job. Was your job
6 important to you?

7 **A.** Oh, absolutely. We made the decision when our child was
8 born that Mason would be a stay-at-home dad, and I would be
9 the sole financial provider for our family.

10 So for the prior over ten years, since 2006, Mason
11 was not working. He was a stay-at-home dad. He did get
12 involved in kind of -- I hate to say, like, geeky, technical
13 projects that I didn't understand and were way over my head.
14 But, you know, he did -- he had his own little projects that
15 he worked on; but he also stayed at home and, you know, would
16 take Maya to school and things like that.

17 And we made that decision because my income was
18 much higher than what he was able to make as a software
19 developer.

20 **Q.** So December of 2017, when you're -- when you have the
21 discussion with Mr. Mekerri you described a few minutes ago,
22 had you, as of that time, typically received annual
23 performance reviews?

24 **A.** Yes. Yes. At PPD?

25 **Q.** Yes, at PPD.

1 **A.** Yes.

2 **Q.** All right. And generally speaking, what do you recall
3 about the substance of those reviews?

4 **A.** The first review I got at the end of 2015, I had been
5 reporting to David Johnston temporarily because my initial
6 boss left, and it was a great review. He was really
7 impressed by how fast I was able to get a global validation
8 project completed that had been stalled for many, many, many
9 months.

10 So he was very impressed. We got along great. A
11 lot of times, he would reach out to me and say, "Hey, do you
12 want to join me? I'm watching this Webex," and I think that
13 caused a little friction with my -- my initial boss at the
14 time. But David Johnston had a lot of trust in me and gave
15 me a really good review.

16 **Q.** So I'm going to show you here Joint Exhibit 57. And can
17 you tell the jury what this is?

18 **A.** This is my performance review from 2015 from David
19 Johnston.

20 **Q.** Okay. And I'll turn to the second page here, and I'll
21 try to enlarge the top of it a little bit here. Do you see
22 the top section, the second page, it has a goal there. Do
23 you see that?

24 **A.** Yes.

25 **Q.** And can you tell the jury how -- what, just generally

1 speaking, the practice was in terms of establishing goals at
2 PPD?

3 **A.** Generally, you would establish goals at the beginning of
4 the year, but since I was coming in -- you know, I was hired
5 at the end of August, I quickly developed these goals upon
6 being hired. And then these are goals that are used to
7 measure your performance midyear and at the end of the year.

8 **Q.** Okay. And so there -- looks -- strike that.

9 So it looks like part of the system is the employee
10 provides a rating, and then the manager provides a rating?
11 Is that what we're looking at?

12 **A.** Yes. So the employee has the ability to pull this up in
13 the performance management system where they can look at the
14 goals that they've set for themselves and provide
15 documentation as to how they met that goal or -- or if it was
16 a midyear review, are they on target in meeting that goal,
17 where they're at -- basically, supportive comments to
18 describe how you're -- how you're going on reaching that
19 goal.

20 **Q.** Okay. And so if you look at the first goal here, do you
21 see that Mr. Johnston, he rated you fully effective?

22 **A.** Yes.

23 **Q.** And was -- was part of your responsibilities at PPD to
24 provide these reviews for people that you managed?

25 **A.** Yes.

1 **Q.** And did you have an understanding in terms of what a --
2 what a three fully effective rating sort of meant?

3 **A.** Yes. That was -- that was the bulk, I think, of what
4 most people received at PPD. That meant you're a good
5 employee, you're doing -- doing a good job, and, you know, no
6 issues, really.

7 **Q.** And let me scroll down to the second goal here. It looks
8 like Mr. Johnston rated you as highly effective?

9 **A.** Yes.

10 **Q.** Do you see that?

11 **A.** This --

12 **Q.** And based upon your experience at PPD, what's your
13 understanding of the significance of that?

14 **A.** Yeah. Like I said, this is -- he was really impressed
15 that I was able to get this global validation project
16 completed in the short time that I was there. Yeah. So I
17 went, you know, above and beyond to get that done, pushed a
18 lot of people to work really hard and did not take no as an
19 answer.

20 And, you know, I said -- set deadlines and said
21 we're going to meet these deadlines. And I took very large
22 validations home with me every weekend so I could make sure
23 that we would get this project done.

24 **Q.** And if you look at the next page here, you see another
25 goal here, and it looks like that's another highly effective

1 rating from Mr. Johnston. Do you see that?

2 **A.** Yes.

3 **Q.** Do you recall what that -- what that goal was?

4 **A.** Yes. When I started at PPD, we needed to identify if
5 there were any regulatory and -- compliance gaps. Coming
6 from a large independent laboratory and a hospital
7 laboratory, I was able to identify those right away. And I
8 brought that to Chad's attention, to several people's
9 attention, saying that we should not be reporting out results
10 from an area that I am not qualified to oversee, from a
11 regulatory standpoint.

12 So I said that we need to -- at this point, we were
13 kind of borrowing people from one of the Richmond labs who
14 qualified to oversee molecular, and then they -- he reached
15 out to get the New York certification. And that was the same
16 with flow cytometry. Eventually, the person from molecular,
17 I think, was abruptly let go, so we were just instantly not
18 in compliance again.

19 And the person from flow was more -- he worked in
20 the Richmond laboratory primarily where they did measure
21 research-based-type testing and wasn't as familiar, I guess,
22 as clinical flow cytometry is done in, like, hospital labs
23 and clinical laboratories.

24 So we had a compliance gap there as well, and I
25 identified that and said that, you know, we need to find

1 people either within PPD that can qualify or hire someone
2 externally at -- either as a consultant or a permanent hire.

3 **Q.** Okay. And then, just to look at the -- well, the bottom
4 of that page, that was another highly effective rating; is
5 that right?

6 **A.** Yes.

7 **Q.** Okay. And then -- turning to the next page, page 4 here,
8 you see there's a rating there for decision-making. Do you
9 see that?

10 **A.** Yes.

11 **Q.** All right.

12 **A.** Yes.

13 **Q.** And can you tell us what Mr. Johnston rated you on that?

14 **A.** A rating of five, exceptional, which is the highest
15 rating.

16 **Q.** Okay. Now, this was Mr. Johnston. Did you ever receive
17 a rating from -- I'm sorry -- a performance review from
18 Mr. Mekerri?

19 **A.** Yes.

20 **Q.** And was that the following year?

21 **A.** Yes.

22 **Q.** Okay. I'm now going to show you Joint Exhibit 58. Let
23 me get back to the first page. Sorry.

24 And can you tell us what this is?

25 **A.** This is my 2016 performance review by Hacene Mekerri.

1 **Q.** Okay. And if you -- do you recall generally what the --
2 what the overall message was of this rating to you?

3 **A.** I was rated as highly effective. He had positive things
4 to say. I can't remember what the focus was, without looking
5 at my goals, of 2016, but --

6 **Q.** Okay. Let's -- let's -- the second page here, can you
7 see a goal here listed as "Collaborate with lab data
8 management and finance so establish and standardize global
9 lab metrics for test volumes, supply costs, and
10 revenue-generated per tests/test category."

11 Do you see that?

12 **A.** Yes.

13 **Q.** And how did Mr. Mekerri rate you for that?

14 **A.** Highly effective.

15 **Q.** And you see that there are some notes then beneath the
16 rating. What was your understanding as to why the reason why
17 there's a space for notes there?

18 **A.** Everyone at PPD is trained thoroughly on how to complete
19 their -- complete their performance reviews, work through the
20 performance management system. And there's tutorials that
21 you have to go through and watch and -- that are required.

22 And so as part of that, it's -- as part of that
23 training, it's -- you need to document to support your
24 rating. So you can't just put in a number; you have to
25 support it with evidence. And the employee has to do that

1 for themselves, and then their manager does it after, and
2 then you have a formal performance review where you go
3 through it together.

4 **Q.** Okay. Looking at the second goal there, it says,
5 "Category: Superior performance." Do you see that one?

6 **A.** Yes.

7 **Q.** And what was your rating there?

8 **A.** Highly effective.

9 **Q.** And then the next page, do you see "Category: Continuous
10 Improvement"?

11 **A.** Yes.

12 **Q.** And what was Mr. Mekerri's rating of you for that?

13 **A.** Highly effective.

14 **Q.** And then the -- scrolling down, the next category,
15 "People and Culture," do you see that?

16 **A.** Yes.

17 **Q.** What was Mr. Mekerri's rating of you there?

18 **A.** Highly effective, even though I rated myself as lower
19 than that.

20 **Q.** Going to the next page, you see there's a category,
21 "Organizational Awareness"?

22 **A.** Yes.

23 **Q.** How did Mr. Mekerri rate you for that?

24 **A.** Highly effective.

25 **Q.** Do you see the next category, Decision-Making?

1 **A.** Yes.

2 **Q.** How did he rate you for that?

3 **A.** Highly effective.

4 **Q.** All right. Going back to the -- actually, strike that.

5 In -- at some point in 2017, had you and your
6 family moved?

7 **A.** Yes.

8 **Q.** And why was it that you had relocated?

9 **A.** Hacene and I had a conversation in his office, and I
10 brought up the idea. I said, "Look" -- well, at this time,
11 he already knew about all the issues that were going on with
12 my child at school with the bullying and that it was -- I
13 mean, he saw me in tears at one point and was, like, "You can
14 go and talk to the head of the school, whatever you need to
15 do." So I -- I kept him informed about that. We were really
16 close colleagues.

17 And so I brought up the idea of trying to find a
18 different school for Maya because I was really concerned
19 about, as a child, the amount of depression that they were
20 exhibiting. I was worried about the impact that would have
21 on them later in life.

22 So I asked Hacene would there be a possibility that
23 I could go remote so that I could move my child into a school
24 where they wouldn't be bullied, that they felt safe? And at
25 the time, he -- he had one direct report who he brought up,

1 and it was, like, "Oh, yeah. Like Michelle Dockhorn, she's
2 remote, so I don't have any problem with it; but I want to
3 run it by David Johnston," who he was reporting to at the
4 time.

5 And then we also agreed that it would be positive
6 because it would allow me to more equally travel to the four
7 different laboratories that I was responsible for. I was
8 hired to oversee four laboratories and had only been to China
9 and Singapore once and to the Brussels lab, I think, a few
10 times at that point. So I was really happy about the idea
11 that I could more equally cover the four Global laboratories
12 that I oversaw.

13 And, yeah, we knew it wasn't going to be anything
14 immediate. We decided that -- he said we should talk to
15 Chad, and we all worked together for a few months to try to
16 come up with, like, an organizational structure so -- that
17 showed how we would bring in some additional scientific
18 expertise. We decided that we would bring in someone who
19 could be the CAP director and the New York stakeholder
20 director for Highland Heights.

21 I would remain as the CAP director for the Belgium
22 lab. Like I said, in Asia, their requirements were that they
23 had local doctors on their certificates. And the individuals
24 that we hired would report to me, and these were primarily
25 PhD-level candidates that could cover the areas where I had

1 identified that we had compliance gaps.

2 So -- yeah. I forgot the rest of your question.

3 **Q.** No worries.

4 **A.** Sorry.

5 **Q.** I'll ask another one.

6 So at some point, was a decision made that you
7 would be permitted to work remotely?

8 **A.** Yes.

9 **Q.** Okay. And do you recall who was involved in making that
10 decision?

11 **A.** I know Hacene got permission from David Johnston, and he
12 also -- I had a call with Jerry Williams, and we also
13 presented -- once Chad and Hacene and I came up with our
14 proposed org chart, that was one of the few presentations I
15 gave at the senior leadership team meeting to show them the
16 new structure that we proposed and that we were going to be
17 recruiting for these individuals to cover these areas. And
18 that's why it was one of my primary goals in 2017.

19 **Q.** So now I'm going to show you Joint Exhibit 392. And
20 looking at the top, do you see this as an email from Chad
21 St. John?

22 **A.** Yes.

23 **Q.** Can you tell the jury who Mr. St. John is?

24 **A.** He was the director of human resources of the
25 Highland Heights lab; and then I think later that expanded to

1 cover more of the laboratories, but basically the lab
2 director -- I mean, the lab director -- the human resources
3 director for the Global Central Labs.

4 **Q.** And if I can direct your attention here to the second
5 paragraph of the email, you see it begins, "Lisa has also
6 shared"?

7 **A.** Yes.

8 **Q.** And then if you look at the second sentence, it reads,
9 "No concerns regarding her physical move have been expressed
10 or detected at this time."

11 Do you see that?

12 **A.** Yes.

13 **Q.** Was that accurate?

14 **A.** Yes.

15 **Q.** And subsequent to -- subsequent to this email, were you,
16 during your employment at PPD, ever advised that there were
17 any concerns concerning your -- your remote work status?

18 **A.** No.

19 THE COURT: I'm going to stop you there,
20 Mr. Hannon.

21 So, ladies and gentlemen of the jury, it's
22 four o'clock. We're going to stop for the day. Don't
23 discuss the case among yourselves. Don't discuss with anyone
24 else. Don't do any independent research.

25 I know that the Seaport is probably not where you

1 ordinarily come for work, so tomorrow morning, like today, is
2 sort of a different commute for you. So do your best to try
3 to organize yourself, figure it out and get here so you're in
4 the jury room, ready to go at nine o'clock, because we hope
5 to start right on time, but we can't start without everybody
6 who is already here.

7 So thank you very much for your attention. Have a
8 nice evening.

9 All rise for the jury.

10 JUROR: So tomorrow, we are -- we are --

11 THE COURT: 9:00 to 1:00 tomorrow. One o'clock --
12 done tomorrow. Exactly.

13 (Jury not present.)

14 THE COURT: Okay. Anything for any of you before
15 we stand in recess?

16 MR. HANNON: Nothing here, Your Honor.

17 MS. MANDEL: Just -- just one real quickly.

18 I'm not sure, in terms of that exhibit issue, if
19 we're going to need have it resolved before tomorrow, the one
20 contested exhibit that I mentioned regarding Ms. Ballweg.

21 MR. HANNON: Sure.

22 MS. MANDEL: Timing -- I don't know if that's a
23 today issue, if you want to hold it till tomorrow.

24 MR. HANNON: We can tackle it in the morning,
25 maybe.

1 THE COURT: I'm happy to see you at 8:30. If
2 there's something you want me to read tonight, you can tell
3 me what it is and give it to me.

4 MS. MANDEL: Can we just --

5 MR. HANNON: Go for it.

6 THE COURT: You can sit down there or back at the
7 table, whichever you prefer. You don't have to remain
8 standing.

9 Okay. So this is Exhibit D- 530. I'll read this.
10 And I take it there's evidentiary disputes about it?

11 MR. HANNON: Correct. I believe my only objection
12 was to hearsay.

13 Is that right? This was --

14 THE COURT: You plan -- Ms. Mandel, you plan to
15 offer this?

16 MS. MANDEL: We do.

17 THE COURT: And your objection, essentially, is
18 hearsay?

19 MR. HANNON: Yes. Is that the -- is that the --

20 THE COURT: Dated May 2, 2018, complaint of
21 discriminatory behavior and disability discussion with Lisa
22 Menninger -- am I saying your name, correct? I'm not sure
23 I'm --

24 DR. MENNINGER: It is Menninger.

25 THE COURT: Menninger. I'm sorry.

1 DR. MENNINGER: No.

2 MR. HANNON: I just learned it two days ago, so no
3 worries.

4 THE COURT: By Ballweg?

5 MR. HANNON: Yes. Just hearsay is all, Your Honor.

6 THE COURT: Okay. I'll read it. We'll talk about
7 it tomorrow at 8:30 as well as anything else.

8 Have a good day. We'll see you tomorrow. Thanks.

9 THE DEPUTY CLERK: Court's in recess.

10 (Court in recess at 4:04 p.m.)
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C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Rachel M. Lopez

March 20, 2023

/s/ Robert W. Paschal

Rachel M. Lopez, CRR

Date

Robert W. Paschal, CRR, RMR

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